

VOLUME 12

FILED

2770
JUL 09 2003

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
TRIAL COURT CASE NO. 01-CR-794
SUPREME COURT OF OHIO CASE NO. 03-137

STATE OF OHIO)
)
Plaintiff)
)
-vs-)
)
NATHANIEL JACKSON)
)
Defendant)

TESTIMONY

BE IT REMEMBERED, that on Tuesday, October 29,
2002, Wednesday, October 30, 2002, and Thursday,
October 31, 2002, these proceedings came on to be
heard before one of the Judges of this Court, John M.
Stuard, in Courtroom No. 2, on High Street, Warren,
Ohio, before the case heretofore filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

2771

A P P E A R A N C E S

On Behalf of the State of Ohio:

Dennis Watkins

Trumbull County Prosecutor

Charles L. Morrow

Assistant Prosecuting Attorney

160 High Street, N.W.

Warren, Ohio

On Behalf of the Defendant:

Anthony V. Consoldane, Attorney at Law

James F. Lewis, Attorney at Law

State of Ohio Public Defender's Office

328 Mahoning Ave., N.W.

Warren, Ohio

1	<u>I N D E X</u>	
2		PAGE NO.
3	Search Warrant Hearing (December 20, 2001)	3
4	Initial Appearance of Nathaniel Jackson Hearing (December 21, 2001)	9
5	Initial Appearance of Donna Roberts Hearing (December 21, 2001)	12
6	Motion to Intervene (December 31, 2001)	19
7	Arraignment of Donna Roberts (co-defendant) Arraignment of Nathaniel Jackson	57
8	Waiver of Speedy Trial (January 23, 2002)	64
9	Hearing on Motions (March 20, 2002)	67
10	Hearing on Motion to Suppress Evidence (April 17, 2002)	185
11	<u>WITNESSES AT SUPPRESSION HEARING:</u>	
12	<u>JEFFREY R. HOOLIHAN</u>	
13	Direct Examination by Mr. Watkins	190
14	Cross Examination by Mr. Lewis	231
15	Redirect Examination by Mr. Watkins	274
16	Recross Examination by Mr. Lewis	280
17	<u>DET. SGT. PAUL MONROE</u>	
18	Direct Examination by Mr. Lewis	288
19	Examination by The Court	312
20	<u>NATHANIEL JACKSON</u>	
21	Direct Examination by Mr. Consoldane	314
22	Cross Examination by Mr. Watkins	324

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	Court's Opening Remarks (Volume 2)	381
3	Motion for Mistrial	415
4	<u>VOIR DIRE</u>	
5	Hardship Excuses	422
6	Death Penalty Qualification & Media (Volume 3)	664
7	Motion for Change of Venue & Motion to Dismiss	1835
8	<u>GENERAL VOIR DIRE</u>	1857
9	OPENING STATEMENT ON BEHALF OF STATE OF OHIO	2064
10	OPENING STATEMENT ON BEHALF OF THE DEFENDANT	2093
11	<u>STATE'S WITNESSES:</u>	
12	<u>PAULA CARSON</u>	
13	Direct Examination by Mr. Morrow	2100
14	Cross Examination by Mr. Lewis	2105
15	<u>JAMES C. DANIELS</u>	
16	Direct Examination by Mr. Watkins	2111
17	Cross Examination by Mr. Lewis	2124
18	Redirect Examination by Mr. Watkins	2138
19	<u>JOSE SANCHEZ</u>	
20	Direct Examination by Mr. Watkins	2139
21	Cross Examination by Mr. Lewis	2156
22	Redirect Examination by Mr. Watkins	2168
23	<u>FRANK E. REYNOLDS</u>	
24	Direct Examination by Mr. Watkins	2172
25	Cross Examination by Mr. Lewis	2191
26	Redirect Examination by Mr. Watkins	2201
27	<u>PAUL MONROE</u>	
28	Direct Examination by Mr. Watkins	2202
29	Cross Examination by Mr. Consoldane	2392

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>MIKE YANNUCCI</u>	
	Direct Examination by Mr. Morrow	2406
3	Cross Examination by Mr. Lewis	2418
	Redirect Examination by Mr. Morrow	2428
4		
	<u>RICHARD TACKETT</u>	
5	Direct Examination by Mr. Morrow	2428
	Cross Examination by Mr. Lewis	2434
6		
	<u>ANTHONY LESHNACK</u>	
7	Direct Examination by Mr. Watkins	2445
	Cross Examination by Mr. Consoldane	2455
8		
	<u>FRANK DILLON</u>	
9	Direct Examination by Mr. Watkins	2457
	Cross Examination by Mr. Lewis	2480
10		
	<u>DR. THEODORE SOBOSLAY</u>	
11	Direct Examination by Mr. Watkins	2512
12		
	<u>DR. HUMPHREY GERMANIUK</u>	
	Direct Examination by Mr. Watkins	2520
13	Cross Examination by Mr. Consoldane	2576
	Redirect Examination by Mr. Watkins	2583
14	Recross Examination by Mr. Consoldane	2585
	Redirect Examination by Mr. Watkins	2586
15		
	<u>JOSE FLORES</u>	
16	Direct Examination by Mr. Watkins	2587
	Cross Examination by Mr. Lewis	2599
17		
	<u>EDWARD LULLA</u>	
18	Direct Examination by Mr. Watkins	2604
	Cross Examination by Mr. Lewis	2624
19		
	<u>JOHN STAMPER</u>	
20	Direct Examination by Mr. Watkins	2645
	Cross Examination by Mr. Lewis	2652
21		
22		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JEFF DIAMANTES</u>	
	Direct Examination by Mr. Watkins	2654
3	Cross Examination by Mr. Lewis	2659
	Redirect Examination by Mr. Watkins	2661
4		
	<u>MICHAEL ROBERTS</u>	
5	Direct Examination by Mr. Morrow	2663
	Cross Examination by Mr. Consoldane	2695
6	Redirect Examination by Mr. Morrow	2704
	Recross Examination by Mr. Consoldane	2706
7		
	<u>CYNTHIA MAYLE</u>	
8	Direct Examination by Mr. Watkins	2706
	Cross Examination by Mr. Consoldane	2728
9		
	<u>DALE LAUX</u>	
10	Direct Examination by Mr. Watkins	2735
	Cross Examination by Mr. Consoldane	2751
11	Redirect Examination by Mr. Watkins	2790
	Recross Examination by Mr. Lewis	2798
12		
	<u>BRENDA GERARDI</u>	
13	Direct Examination by Mr. Watkins	2803
	Cross Examination by Mr. Lewis	2840
14		
	<u>STEVE GREENE</u>	
15	Direct Examination by Mr. Morrow	2851
	Cross Examination by Mr. Lewis	2875
16		
	<u>CHRIS ELLINGTON</u>	
17	Direct Examination by Mr. Morrow	2881
	Cross Examination by Mr. Consoldane	2888
18		
	<u>JIM McCOY</u>	
19	Direct Examination by Mr. Morrow	2890
	Cross Examination by Mr. Lewis	2899
20		
	<u>JILL KENYON</u>	
21	Direct Examination by Mr. Morrow	2900
	Cross Examination by Mr. Consoldane	2908
22		

v

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JENNIFER ROBINSON</u>	
	Direct Examination by Mr. Morrow	2911
3	Cross Examination by Mr. Lewis	2920
4	<u>KATHY KIHM</u>	
	Direct Examination by Mr. Morrow	2921
5	Cross Examination by Mr. Lewis	2924
6	<u>BRIDGET PAUL</u>	
	Direct Examination by Mr. Morrow	2925
7	Cross Examination by Mr. Consoldane	2934
8	<u>KATHERINE THOMAS</u>	
	Direct Examination by Mr. Morrow	2936
9	Cross Examination by Mr. Lewis	2952
	Redirect Examination by Mr. Morrow	2973
10	Recross Examination by Mr. Lewis	2976
11	<u>JAMES CAMPBELL</u>	
	Direct Examination by Mr. Watkins	2977
12	Cross Examination by Mr. Consoldane	2982
13	<u>LINDA THOMAS</u>	
	Direct Examination by Mr. Morrow	2994
14	Cross Examination by Mr. Consoldane	3002
15	<u>CHRISTOPHER MONYAK</u>	
	Direct Examination by Mr. Morrow	3003
16	Cross Examination by Mr. Lewis	3023
	Redirect Examination by Mr. Morrow	3037
17	<u>TROOPER GERALD FUNELLI</u>	
18	Direct Examination by Mr. Morrow	3038
	Cross Examination by Mr. Lewis	3046
19	<u>DET. SGT. PAUL MONROE</u>	
20	Redirect Examination by Mr. Watkins	3049
	Recross Examination by Mr. Lewis	3063
21	<u>BRAD CAIN</u>	
22	Direct Examination by Mr. Lewis	3106

Admitted
 Dismissed over Objection
 In Disposition

vii

vi

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>TAMMIE KAYE</u>	
3	Direct Examination by Mr. Consoldane	3118
4	<u>ROBERT STANTON</u>	
5	Direct Examination by Mr. Lewis	3119
6	Cross Examination by Mr. Watkins	3127
7	MOTIONS	3200
8	<u>CARMEN OLIVA</u>	
9	Direct Examination by Mr. Watkins	3267
10	Cross Examination by Mr. Lewis	3278
11	<u>BARRY RICKER</u>	
12	Direct Examination by Mr. Watkins	3290
13	Cross Examination by Mr. Lewis	3300
14	<u>DIANA MARCHESE</u>	
15	Direct Examination by Mr. Watkins	3309
16	Cross Examination by Mr. Consoldane	3314
17	Redirect Examination by Mr. Watkins	3319
18	Recross Examination by Mr. Consoldane	3319
19	MOTION RE JURY INSTRUCTIONS	3334
20	FINAL ARGUMENT ON BEHALF OF STATE OF OHIO	3390
21	FINAL ARGUMENT ON BEHALF OF THE DEFENDANT	3438
22	FINAL ARGUMENT CONT. ON BEHALF OF DEFENDANT	3495
23	REBUTTAL ARGUMENT ON BEHALF OF STATE OF OHIO	3505
24	CHARGE OF THE COURT	3541
25	NOVEMBER 7, 2002 (Deliberations)	3601
26	NOVEMBER 8, 2002 (Deliberations)	3602
27	VERDICT	3612
28	(SEE SEPARATE VOLUME FOR TRANSCRIPT OF MITIGATION HEARING)	

Exhibit No.	Description	Admitted
1	911 Tape	Admitted over Obj
1A	911 Paper work	No Objection
2	Crime Scene Video	Objection Sustained
3	Crime Scene Diagram	Admitted over Obj
4	Photo	No Objection
5	Photo	No Objection
6	Photo	Withdrawn
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	No Objection
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	No Objection
25	Photo	No Objection
26	Photo	No Objection
27	Photo	No Objection
28	Photo	No Objection
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	No Objection
32	Photo	Withdrawn
33	Photo	No Objection
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	No Objection
38	Photo	No Objection
39	Photo	Withdrawn
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	No Objection
44	Photo	No Objection
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	No Objection
58	Photo	No Objection
59	Photo	No Objection
60	Photo	No Objection

vii

61	Photo Shirt	No Objection
62	Photo Shirt	No Objection
63	Photo - Victim	Withdrawn
64	Bullet Recovered from Brain of Victim	No Objection
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Reds Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - peninsula	Withdrawn
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops - garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters - garage	No Objection
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	Withdrawn
100	Victim -back close up	Withdrawn
101	Small key found under victim	No Objection
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	No Objection
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

viii

118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	left rear red car	No Objection
128	left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior - Left Console	No Objection
175	Napkin w/ Blood Smear	No Objection
176	Floor mat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

ix

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side - steering wheel p garage door opener	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	keys	Withdrawn
189	Cell Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	Objection Sustained
193	Wagon Wheel Photo	Objection Sustained
194	Wagon Wheel Photo	Admitted over Obj
195	Wagon Wheel Photo	Admitted over Obj
196	Wagon Wheel Photo	Objection Sustained
197	Photograph Items Recovered Days Inn	Admitted over Obj
198	No Exhibit	
199	Days Innn Photographs	Withdrawn
200	Days Innn Photographs	Withdrawn
201	Days Innn Photographs	Admitted over Obj
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	Withdrawn
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	Withdrawn
206	Days Innn Photographs	Withdrawn
207	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
210	Days Innn Photographs	Withdrawn
211	Days Innn Photographs	Withdrawn
212	Days Innn Photographs	Withdrawn
213	Days Innn Photographs	Withdrawn
214	Days Innn Photographs	Withdrawn
215	Days Innn Photographs	Withdrawn
216	Days Innn Photographs	Withdrawn
217	Days Innn Photographs	Withdrawn
218	Days Innn Photographs	Withdrawn
219	Days Innn Photographs	Withdrawn
220	Days Innn Photographs	Withdrawn
221	Days Innn Photographs	Withdrawn
222	Days Innn Photographs	Withdrawn
223	Days Innn Photographs	Withdrawn
224	Days Innn Photographs	Admitted over Obj
225	Days Innn Photographs	Withdrawn
226	Days Innn Photographs	Admitted over Obj
227	Photographs of Wirt Street	Admitted over Obj
228	Photographs of Wirt Street	Out
229	Photographs of Wirt Street	Out
230	Photographs of Wirt Street	Admitted over Obj
231	Photographs of Wirt Street	Admitted over Obj
232	Photographs of Wirt Street	Out
233	Wirt Street Photographs	Out
234	Wirt Street Photographs	Admitted over Obj
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and Hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

x

271D32	10/23/01	Letters From Donna to Nate	
271D33	10/23/01		
271D34	10/23/01		
271D35	10/23/01		
271D36	10/23/01		
271D37	10/23/01		
271D38	10/23/01		
271D39	10/23/01		
271D40	10/23/01		
271D41	10/23/01		
271D42	10/23/01		
271D43	10/23/01		
271D44	10/23/01		
271D45	10/23/01		
271D46	10/23/01		
271D47	10/23/01		
271D48	10/23/01		
271D49	10/23/01		
271D50	10/23/01		
271D51	10/23/01		
271D52	10/23/01		
271D53	10/23/01		
271D54	10/23/01		
271D55	10/23/01		
271D56	10/23/01		
271D57	10/23/01		
271D58	10/23/01		
271D59	10/23/01		
271D60	10/23/01		
271D61	10/23/01		

xi

271D124	10/05/01	271D62	10/30/01	Admitted	xii
271D125	10/04/01	271D63	10/29/01	Admitted	
271D126	10/04/01	271D64	10/29/01	Admitted	
271D127	10/02/01	271D65	10/28/01	Admitted	
271D128		271D66	10/27/01	Admitted	
271D129		271D67	10/26/01	Admitted	
271D130		271D68	10/26/01	Admitted	
271D131		271D69	10/26/01	Admitted	
271D132		271D70	10/25/01	Admitted	
271D133		271D71	10/25/01	Admitted	
271D134		271D72	10/24/01	Admitted	
271D135		271D73	10/24/01	Admitted	
271D136		271D74	10/23/01	Admitted	
271D137		271D75	10/23/01	Admitted	
271D138		271D76	10/23/01	Admitted	
271D139		271D77	10/23/01	Admitted	
271D140		271D78	10/22/01	Admitted	
271D141		271D79	Empty	Admitted	
271D142		271D80	10/21/01	Admitted	
271D143		271D81	10/20/01	Admitted	
271D144		271D82	10/20/01	Admitted	
271D145		271D83	10/20/01	Admitted	
271D146		271D84	10/20/01	Admitted	
271D147		271D85	10/19/01	Admitted	
271D148		271D86	10/19/01	Admitted	
271D149		271D87	10/19/01	Admitted	
271D150		271D88	10/19/01	Admitted	
271D151		271D89	10/18/01	Admitted	
271D152		271D90	Empty	Admitted	
271D153		271D91	10/18/01	Admitted	
271D154		271D92	10/17/01	Admitted	
271D155		271D93	10/16/01	Admitted	
271D156		271D94	10/16/01	Admitted	
271D157		271D95	10/15/01	Admitted	
271D158		271D96	10/15/01	Admitted	
271D159		271D97	10/15/01	Admitted	
271D160		271D98	10/13/01	Admitted	
271D161		271D99	10/13/01	Admitted	
271D162		271D100	10/13/01	Admitted	
271D163		271D101	10/12/01	Admitted	
271D164		271D102	10/12/01	Admitted	
271D165		271D103	10/12/01	Admitted	
271D166		271D104	Empty	Admitted	
271D167		271D105	10/12/01	Admitted	
271D168		271D106	10/12/01	Admitted	
271D169		271D107	10/11/01	Admitted	
271D170		271D108	10/11/01	Admitted	
271D171		271D109	10/11/01	Admitted	
271D172		271D110	10/10/01	Admitted	
271D173		271D111	10/10/01	Admitted	
271D174		271D112	10/10/01	Admitted	
271D175		271D113	10/08/01	Admitted	
271D176		271D114	10/08/01	Admitted	
271D177		271D115	10/06/01	Admitted	
271D178		271D116	10/06/01	Admitted	
271D179		271D117	10/06/01	Admitted	
271D180		271D118	10/05/01	Admitted	
271D181		271D119	10/05/01	Admitted	
271D182		271D120	10/05/01	Admitted	
271D183		271D121	10/05/01	Admitted	
271D184		271D122	10/05/01	Admitted	
271D185		271D123	10/05/01	Admitted	

273N	Letters from Nate to Donna
273N1	12/01/01
273N2	1/30/01

271D124	XIV	10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

xiii

273N	Letters from Nate to Donna	Admitted
273N1	12/01/01	Admitted
273N2	11/30/01	Admitted
273N3	11/29/01	Admitted
273N4	11/28/01	Admitted
273N5	11/27/01	Admitted
273N6	11/26/01	Admitted
273N7	11/25/01	Admitted
273N8	11/23/01	Admitted
273N9	11/22/01	Admitted
273N10	11/20/01	Admitted
273N11	11/19/01	Admitted
273N12	11/17/01	Admitted
273N13	11/16/01	Admitted
273N14	11/14/01	Admitted
273N15	11/14/01	Admitted
273N16	11/13/01	Admitted
273N17	11/12/01	Admitted
273N18	11/12/01	Admitted
273N19	11/10/01	Admitted
273N20	11/09/01	Admitted
273N21	11/07/01	Admitted
273N22	11/06/01	Admitted
273N23	11/08/01	Admitted
273N24	11/05/01	Admitted
273N25	11/03/01	Admitted
273N26	11/01/01	Admitted
273N27	11/01/01	Admitted
273N28	10/31/01	Admitted
273N29	10/30/01	Admitted
273N30	273N31	273N32
273N31	10/28/01	Admitted
273N32	10/27/01	Admitted
273N33	273N34	273N35
273N34	10/25/01	Admitted
273N35	10/25/01	Admitted
273N36	10/25/01	Admitted
273N37	10/24/01	Admitted
273N38	10/23/01	Admitted
273N39	10/22/01	Admitted
273N40	10/21/01	Admitted
273N41	10/21/01	Admitted
273N42	10/20/01	Admitted
273N43	10/19/01	Admitted
273N44	10/18/01	Admitted
273N45	10/17/01	Admitted
273N46	10/16/01	Admitted
273N47	10/16/01	Admitted
273N48	10/15/01	Admitted
273N49	10/14/01	Admitted
273N50	10/12/01	Admitted
273N51	10/10/01	Admitted
273N52	10/10/01	Admitted
273N53	10/08/01	Admitted
273N54	10/05/01	Admitted
273N55	10/07/01	Admitted
273N56	10/04/01	Admitted
273N57	10/04/01	Admitted
273N58	10/02/01	Admitted
273N59	10/01/01	Admitted
273N60	10/01/01	Admitted
273N61	09/30/01	Admitted

xiv

xv

273N124		09/27/01	Admitted
273N125		09/27/01	Admitted
273N62		07/12/01	Admitted
273N63		06/28/01	Admitted
273N64		06/09/01	Admitted
273N65		05/18/01	Admitted
273N66		05/15/01	Admitted
273N67		05/12/01	Admitted
273N68		05/10/01	Admitted
273N69		05/09/01	Admitted
273N70		05/06/01	Admitted
273N71		05/04/01	Admitted
273N72		05/03/01	Admitted
273N73		04/28/01	Admitted
273N74		04/23/01	Admitted
273N75		04/22/01	Admitted
273N76		04/19/01	Admitted
273N77		04/16/01	Admitted
273N78		04/16/01	Admitted
273N79		04/15/01	Admitted
273N80		04/11/02	Admitted
273N81		04/10/01	Admitted
273N82		04/10/01	Admitted
273N83		04/09/01	Admitted
273N84		04/08/01	Admitted
273N85		04/04/01	Admitted
273N86		04/02/01	Admitted
273N87		Unknown	Admitted
273N88		03/31/01	Admitted
273N89		03/29/01	Admitted
273N90		03/26/01	Admitted
273N91		03/25/01	Admitted
273N92		03/23/01	Admitted
273N93		03/22/01	Admitted
273N94		03/20/01	Admitted
273N95		03/20/01	Admitted
273N96		03/20/01	Admitted
273N97		03/19/01	Admitted
273N98		03/19/01	Admitted
273N99		03/19/01	Admitted
273N100		03/15/01	Admitted
273N101		03/13/01	Admitted
273N102		03/12/01	Admitted
273N103		03/11/01	Admitted
273N104		03/09/01	Admitted
273N105		03/06/01	Admitted
273N106		03/04/01	Admitted
273N107		03/03/01	Admitted
273N108		03/02/01	Admitted
273N109		02/27/01	Admitted
273N110		02/25/01	Admitted
273N111		02/20/01	Admitted
273N112		02/23/01	Admitted
273N113		02/22/01	Admitted
273N114		02/19/01	Admitted
273N115		02/16/01	Admitted
273N116		02/15/01	Admitted
273N117		Unknown	Admitted
273N118		02/13/01	Admitted
273N119		02/12/01	Admitted
273N120			
273N121			
273N122			
273N123			

xvi

P(3)	Pages	242	Left Hand - Wound	No Objection
		243	Front view w/ bandage	No Objection
Sup	Exhibit 1 - Clothing	244	Side view Finger	No Objection
		245	Left Hand - wrist to finger tip	No Objection
		246	Left Hand Palm up	No Objection
		247	Back side of Hand	No Objection
		248	Both Hands	No Objection
		249	Head and Shoulders	Admitted over Obj
		250	Full body shot	Objection Sustained
		251	Handgun - .38 Taurus	No Objection
		252	Five (5) Live Rounds from Taurus	No Objection
		252A	Envelope Containing Test Fire Rounds	No Objection
		253	Right Eye glass Lens	No Objection
		254	Eye glasses Missing Right Lens	No Objection
		255	Cotton Swab - Front Door Hallway	No Objection
		256	Dry Wall Cut out w/ Bullet Hole	No Objection
		257	Bullet Recovered from Dry Wall	No Objection
		258	Cincinnati Red's Jacket - From Victim	No Objection
		259	Bullet Recovered from Clothing of Victim	No Objection
		260	Death Certificate	No Objection
		261	Coroner's Verdict	No Objection
		262	Autopsy Protocol - 11 pages	No Objection
		263	Microscopic Examination	No Objection
		264	Toxicology - 1 page Front and Back	No Objection
		264A	Radiology Report	No Objection
		265	Blood - Drawn from Robert Fingerhut	No Objection
		266	Bullet Recovered from Brain of Victim	No Objection
		267	Driver's Side Visor	No Objection
		268	Visor Clamp	No Objection
		269	Keys Recovered from Ignition	No Objection
		270	Bag Containing Letters	No Objection
		271	Letters from Donna to Nate (See attached)	No Objection
		272	No Exhibit	
		273	Letters from Nate to Donna (See Attached)	No Objection
		274	No Exhibit	
		275A	Hand Writing Analysis	Admitted over Obj
		275B	Hand Writing Analysis	Admitted over Obj
		276A	Hand Writing Standard	No Objection
		276B	Hand Writing Standard	No Objection
		276b1	CCA Records	No Objection
		276B2	CCA Records	No Objection
		276B3	CCA Records	No Objection
		276B4	CCA Records	No Objection
		276B5	CCA Records	No Objection
		276B6	CCA Records	No Objection
		276B7	CCA Records	No Objection
		276C	Hand Writing Standard	No Objection
		276C1	Prison Records	No Objection
		276C2	Prison Records	No Objection
		276C3	Prison Records	No Objection
		276C4	Prison Records	No Objection
		277	01-35755- Two (2) pages	No Objection
		278	01-35755-A	No Objection
		279	01-35755-B	No Objection
		280	01-35755-C	No Objection
		281	01-35755-D	Admitted over Obj
		282A	01-35755 - Mike Roberts (2) Pages	No Objection
		282B		Not Introduced
		282C	01-35755 - Mike Roberts Supplemental	No Objection
		283	01-35755 - Cindy Maylee (2) Pages	No Objection
		284	Dale Laux - (2) Pages	No Objection
		285	Steve Green (1) Page	Admitted over Obj

xvii

286A	Brenda Gerardi (3) Pages	No Objection
286B		Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photgraphic Line -Up Jose Flores	No Objection
314	Evevelope Containing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photgraphic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Enevelope Containing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Phot	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

xviii

xix

323	\$300,000 - State Farm Insurance Policy 17 pages	Admitted over Obj
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 38 Pages	No Objection
327A	Certification - ATF - 1page	Admitted over Obj
327B	Taurus IL46854 - 2 pages	Admitted over Obj
327C	Taurus JH14188 - 1 page	Admitted over Obj
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	No Objection
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01 Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01 Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01 Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01 Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01 Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01 Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01 Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01 Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
349	Photographic Line-Up - Frank Reynolds	Not Introduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Envelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Envelope Containing 2 Photos	No Objection

395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft's Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1 Orientation Instructions		
Court Exhibit 2 Exhibit List		
Court Exhibit 3 Brief In Opposition to Acquittal		
Court Exhibit 4 Jury Charge		
Court Exhibit 5 Corrected Instruction		
Court Exhibit 6 Jury Question		
Court Exhibit 7 Penalty Instruction		

xx

2772

1 (In-chambers at 12:00 noon.)

2 MR. LEWIS: We waive presence of the
3 Defendant.

4 THE COURT: We're in-chambers, out
5 of the hearing of the Jury. The Jury is out to
6 lunch. The Defendant's presence is waived. The
7 items that you are after, we have one of two
8 choices here, James, and you have every right to
9 see any evidence they have, and I don't think the
10 State is disputing that. I just ask as a practical
11 matter, do you want them to haul everything over
12 that they might have? I don't know what the extent
13 of that is. If there are specific items, if you
14 want to just say so, we'll have everything hauled
15 over here, but if there's specific items.

16 MR. LEWIS: Anything that was not
17 analyzed on this.

18 THE COURT: Anything that was sent
19 to him that he did not analyze.

20 MR. LEWIS: Exactly. Everything
21 that was not analyzed.

22 MR. WATKINS: We have it.

2773

1 MR. LEWIS: Bring it over and we'll
2 have him identify it. We have got seven numbers
3 that say unknown blood stains.

4 MR. WATKINS: You can mark them as
5 your Exhibits.

6 THE COURT: He's not after
7 everything, because you have probably got a bunch
8 of stuff over there. He's after specific items
9 that were sent to this man for examination, and he
10 for whatever reason, did not. Can you locate those
11 over lunch?

12 MR. WATKINS: Yes. I am assuming we
13 have them over there.

14 MR. LEWIS: And doing them for
15 Brenda Gerardi that will testify.

16 MR. WATKINS: What she gets, it
17 isn't the same. First off, there's some items that
18 are not sent which you have seen. Then there's
19 items we send, and then there's items that they
20 test, and what they test is pursuant to our
21 request, or police request, and for a variety of
22 reasons, there are not tests on every item. For

2774

1 example, in this case --

2 MR. LEWIS: That is fine. I don't
3 care what excuse you have. The items that were
4 submitted, but never examined.

5 MR. WATKINS: We'll get the items
6 that were submitted.

7 MR. LEWIS: I want that for Dale
8 Laux and for Brenda Gerardi.

9 MR. WATKINS: I'm saying, all of the
10 items that this guy has, that is Dale Laux, will be
11 the items, because she doesn't get it unless he
12 gets it.

13 MR. LEWIS: That is what I am
14 assuming.

15 THE COURT: That solves this
16 problem.

17 (End of in-chamber discussion.)

18 (Resumed in Open Court at 1:30 p.m.)

19 THE COURT: For the record,
20 everything was accomplished that we discussed over
21 lunch, correct?

22 MR. WATKINS: Yes.

2775

1 CONTINUING CROSS EXAMINATION BY MR. LEWIS:

2 Q. Dale, I believe we left off with the idea,
3 once the police department or the
4 investigating officials plus yourself,
5 you have the hypothesis that the
6 direction you travel, basically when you
7 analyze the evidence, is that how you are
8 making some of the decisions?

9 A. Yes, we test that hypothesis.

10 Q. I'm going to have to use your sheet. We're
11 down to -- we were at item number two --
12 well, actually went past that, but let's
13 go back to number two, the brown paper
14 bag containing the shirt from the
15 victim's wife, and serology and search
16 for human blood was to be done or at
17 least the request was there?

18 A. Yes.

19 Q. I'll show you Defendant's Exhibit A. Could
20 you identify the bag? Does it have an
21 indication of the fact that it was
22 submitted to BCI, submitted to yourself

2776

1 and so forth?

2 A. It was submitted to BCI. Our case number up
3 here is at the top and the item number is
4 item two.

5 Q. And that is the shirt referred to in there,
6 correct?

7 A. Yes.

8 Q. This is the one you didn't do any analysis on
9 this whatsoever, right?

10 A. Yes.

11 Q. The next item. The rectal swabs, no problem.

12 The oral swabs, you already got the
13 standard from Mr. Fingerhut?

14 A. Yes.

15 Q. Moving down to number 14. It is labeled as
16 State's Exhibit 255. This is one that
17 you did analyze, correct?

18 A. Yes.

19 Q. You did the presumptive test for blood?

20 A. Yes.

21 Q. That was sent on to Brenda Gerardi?

22 A. Right.

2777

1 Q. For DNA?

2 A. Yes.

3 Q. Now, the next one is a brown envelope. They
4 all say the same thing. Brown envelope
5 containing swab with unknown stain. It
6 is all the same down to item No. 21?

7 A. 22.

8 Q. Did you test those?

9 A. No.

10 Q. I'll show you what has been labeled as
11 Defendant's Exhibit B. I'll show you
12 what has been marked as Defendant's
13 Exhibit B. Could you look at those
14 envelopes and tell me if you recognize
15 them and give us the numbers and if you
16 had seen them before.

17 A. Nine manila envelopes, I have not seen these
18 before. Each one has been labeled with
19 our BCI case number, and the item numbers
20 are 15, 16, 17, 18, 19, 20, 21 and 22,
21 and also item 23 was not for serology,
22 but it is in this Exhibit.

2778

1 Q. You say you haven't seen those before?

2 A. No. lining blood sample

3 Q. They were submitted to BCI. These are the
4 items we're talking about?

5 A. Yes.

6 Q. Okay.

7 A. I don't have my initials on these, these were
8 not examined. 14 was examined by me. I
9 do recall that one, but I don't remember
10 seeing these. They may have been in the
11 bag, but I don't recall looking at these.

12 Q. Although they were submitted to BCI, you don't
13 remember seeing them, is that what you
14 are telling me?

15 A. I know they were submitted, but I did not
16 examine those.

17 Q. Didn't examine them? On all of them it says
18 blood sample from garage floor. Blood
19 sample from garage floor, blood sample
20 from garage floor?

21 A. Yes.

22 Q. Blood sample from garage floor?

2779

1 A. Yes.

2 Q. Different cotton swab containing blood sample
3 from garage side?

4 A. Yes. Everything you said, I can read. By
5 kitchen door.

6 Q. Cotton swab containing blood sample from back
7 side kitchen side, south kitchen door

8 into garage?

9 A. Yes.

10 Q. Cotton swab containing blood sample from back
11 side kitchen?

12 A. Of south kitchen door. Cotton swab containing
13 blood sample from cabinet near south
14 kitchen door.

15 Q. These were not examined or given the
16 presumptive test for blood or sent on?

17 A. That is correct.

18 Q. The next item for serology was what?

19 A. The car.

20 Q. The 300 Chrysler. What Exhibits do you have
21 there for the 300 Chrysler? Did you
22 subdivide those?

2780

1 A. Yes.

2 Q. Where's the subdivision?

3 A. They are in my notes. You want to know where
4 the stains came from?

5 Q. Yes.

6 A. 28.1 was a stain on the outside door handle,
7 underneath the door, passenger side.
8 Item number 28.2 was a small stain in the
9 same location, near stain one. So it was
10 very near the other stain on the door
11 handle, on the underside of it.

12 Q. These were analyzed?

13 A. Yes.

14 Q. You did the presumptive test, came out blood?

15 A. Yes. Stain three was a stain in the trunk, it
16 was on the carpet, it was very dirty
17 looking and the stain was negative. That
18 was not contained. Stain four was on the
19 plastic vinyl passenger door handle area,
20 and I swabbed down inside the handle.
21 Cindy Mayle thought there might be some
22 latent print detail. I left that area

2781

1 alone and obtained the swab from the
2 handle area and that was positive for,
3 presumptive test positive. And stain
4 five was from the outer passenger seat
5 area, two swabs were obtained from that
6 area. Those stains were indicated the
7 presence of blood. A stain on the
8 bracket holding the driver's visor in
9 place which was swabbed, swabs were
10 retained along with the bracket. A stain
11 below the light switch that was above the
12 trunk button, the trunk release button,
13 and two swabs were obtained and
14 presumptive test indicated the appearance
15 of blood on those and those swabs were
16 retained. Finally, the visor was
17 removed.

18 Q. So you had at least -- oh, there's about eight
19 or nine places you had presumptive test
20 for blood was positive and these are the
21 State's Exhibits that you referred to
22 earlier?

2782

1 A. Some of those are, they are not all here. I

2 I believe Brenda has some and she's

3 outside.

4 Q. Were those all sent on for DNA analysis?

5 A. Yes.

6 Q. Incidentally, did you ever have an actual

7 registration for that vehicle? Did BCI

8 ever run a registration for the vehicle?

9 You gave us the VIN number?

10 A. I'm not sure that was done.

11 Q. When you saw the vehicle, did you take any

12 pictures of it yourself, the interior of

13 the vehicle we're talking about, the 300

14 Chrysler?

15 A. No. The detectives were there doing that.

16 Q. When you observed it personally, and you saw

17 it and you inspected it, and by

18 observation, you didn't have to use

19 Luminol to find the blood. There was a

20 lot of it out there?

21 A. It was visible to the naked eye.

22 Q. The next item to go to serology would be what?

2783

1 A. The A submission.

2 Q. A-1 the brown paper bag containing a clump of
3 napkin -- did you do the presumptive test
4 on that?

5 A. No.

6 Q. Brown paper bag containing dish cloth with
7 unknown stain, did you do that?

8 A. No.

9 Q. Brown paper bag containing gauze with a stain,
10 did you do that?

11 A. Yes, that one I did. I examined the gauze,
12 and I stated previously that presumptive
13 test indicated the presence of blood and
14 the gauze was retained.

15 Q. We have got the next one brown paper bag
16 containing with gauze and piece of tape.

17 A. A-4 is not checked.

18 Q. They didn't print it? The brown paper bag
19 containing napkin with stain, did you
20 check for blood on that?

21 A. No.

22 Q. The brown paper bag containing a washcloth

2784

1 with a stain, did you check for that?

2 A. No.

3 Q. The brown paper bag containing -- no. Do you
4 know here?

5 MR. WATKINS: You're not naming
6 them.

7 Q. Empty bandage container, did you check that?

8 It says for latent. Latent means you
9 want prints?

10 A. It was requested that we ask for prints.

11 Q. I am going to assume you didn't test it for
12 blood?

13 A. No.

14 Q. The empty paper tape package, that is also
15 latent, so you didn't test for blood?

16 A. Correct.

17 Q. And I assume it says latent, is that you
18 wouldn't test for blood?

19 A. Right.

20 Q. Down here it says, brown paper bag containing
21 the key. It says check for blood and
22 latent. Did you check for blood?

2785

1 A. No.

2 Q. The brown paper bag containing the cell phone,
3 did you check for blood?

4 A. No.

5 Q. The brown paper bag containing garage door
6 opener, check for blood latent, did you
7 check for the blood?

8 A. No.

9 Q. Brown paper bag containing the CD, check for
10 blood and latent. Did you check for
11 blood?

12 A. No.

13 Q. Piece of chicken, did you check for that?

14 A. No.

15 Q. One contained four napkins, did you check for
16 blood on that?

17 A. No.

18 Q. Brown paper bag containing -- one paper bag
19 containing one comforter from bed with
20 suspect stain, did you check that?

21 A. No.

22 Q. One box containing suspect stain, did you

2786

1 Q. Did you check that?

2 A. No.

3 Q. One box containing suspect stain from the
4 bathroom floor, did you check for that?

5 A. No.

6 Q. One bag containing one washcloth with suspect
7 stain, did you check for that?

8 A. No.

9 Q. One bag containing one hand tool with suspect
10 stain, did you check for that?

11 A. No.

12 Q. One box containing suspect stain from bottom
13 of the trash can, did you check for that?

14 A. No.

15 Q. One envelope containing -- that is it. That
16 is the swab from Donna Roberts for DNA,
17 right?

18 A. Yes.

19 Q. Swabbings from Nathaniel Jackson. The pair of
20 black gloves with the hole in the tip,
21 left index finger stain and residue?

22 A. I didn't check for that.

2787

1 Q. One pair of rubber gloves with a stain?

2 A. No, I did not examine that.

3 Q. One pair of black and red Nike tennis shoes?

4 A. I did not examine those.

5 Q. One black leather jacket?

6 A. No.

7 Q. Out of all of the items, how many would you

8 say that you actually checked for human

9 blood on all of that?

10 A. I didn't check for human blood. I checked for

11 presumptive test on the swab, several

12 locations. I think we said seven or

13 eight locations from the car, and a piece

14 of gauze from A-3, that was from the

15 hotel.

16 Q. Out of the 24 we got, is that six, seven,

17 eight?

18 A. One from the 24.

19 Q. Out of the 24 was how many?

20 A. One.

21 Q. Let me ask you this, can you describe to the

22 Jury what is the presumptive test for

2788

1 blood?

2 A. If something looks like blood, I moisten a

3 cotton swab and swab a portion of the

4 stain and add a chemical. If this swab

5 turns a color, purple or purplish blue

6 color, then it indicates that blood might

7 be present. There are other substances.

8 For example, you can rub a penny or I

9 believe, cauliflower gives a false

10 positive. There are other materials that

11 can look like blood, can give a false

12 positive, that is when we say it is

13 presumptive and then we do further

14 testing if it is human blood and the DNA

15 tells us who it might have come from.

16 Q. In this particular case, the presumptive test,

17 was it the one that you earlier referred

18 to, taking the Q-tip and putting it with

19 the solution?

20 A. Yes.

21 Q. Do you know what the solution is?

22 A. It is tetramethylbenzene.

2789

1 Q. And after how many hours, can you figure out
2 that you have presumptively blood or
3 possibly blood?

4 A. It happens within three seconds.

5 Q. So, out of 24 items of serology, it only takes
6 you about three seconds and you only end
7 up doing one, three seconds for each one?

8 A. You can't multiply three seconds times 24, you
9 have to open up the bag, write in my
10 notes, but it is not a difficult
11 analysis.

12 Q. All I'm asking is that if you have the item,
13 you open the bag or whatever, it takes
14 about three seconds to figure out whether
15 you got it or not possibly and then you
16 move on from there, right?

17 A. Yes.

18 MR. LEWIS: Thank you very much.

19 Q. (By Mr. Lewis) Were you given any bullets to
20 look for possibly the presence of blood?

21 A. No.

22 MR. LEWIS: Thank you.

2790

1 MR. WATKINS: Jim, are you going to
2 submit these, what we brought over for you?

3 MR. CONSOLDANE: He marked some of
4 them.

5 MR. LEWIS: We can mark them.

6 MR. CONSOLDANE: He marked them
7 already.

8 MR. WATKINS: We have Exhibit labels
9 and none but a couple of them are marked. You are
10 not going to do it, I guess. I am letting you do
11 it.

12 MR. LEWIS: I know, you are a nice
13 fellow.

14 CONTINUING CROSS EXAMINATION BY MR. LEWIS

15 Q. Dale, any of the items that were sent to BCI
16 would always have the -- this on it?

17 A. They would have our BCI number and then the
18 submitting agency, yes.

19 MR. LEWIS: We're finished. Thank
20 you.

21 REDIRECT EXAMINATION BY MR. WATKINS:

22 Q. Dale, when you receive items as a general

2791

1 practice, do you do testing on every
2 single item you receive from police
3 agencies?

4 A. No.

5 Q. And if you would do a presumptive test for
6 blood and do a DNA card to send it up to
7 DNA, it was brought out that it doesn't
8 take that long to do the presumptive
9 test, correct?

10 A. That is correct.

11 Q. But you do a sample of blood, say a swab from
12 the floor or swab from a piece of cloth,
13 whatever it would be to do DNA, would it
14 take quite a bit of time and resources?

15 A. Yes.

16 Q. And approximately how long does it take to do
17 a DNA test, if you know?

18 A. A week.

19 Q. Now, when you identified the Exhibits that
20 Detective Monroe made on 12-14-01, which
21 was right after this homicide, the
22 inclusion dealt with a number of unknown

2792

1 stains, is that correct?

2 A. Yes.

3 Q. I think we're dealing with one, two, three,

4 four, five, six, seven, eight, nine --

5 nine of them?

6 A. Yes.

7 Q. And you end up doing one of them?

8 A. Yes.

9 Q. And it was all blood, correct, those stains

10 from what you knew, from what the

11 appearance was, it could have been blood

12 put it that way?

13 A. Well, I suspected that the officer collecting

14 those samples was collecting blood, just

15 like 14 was so I assumed that the rest

16 were blood from the scene.

17 Q. Some of the things that you didn't do, for

18 example, the oral and rectal swabs of the

19 victim?

20 A. Yes.

21 Q. You didn't do it because nobody requested it,

22 right?

2793

1 A. They requested it, but as I said, we discussed
2 items that they wanted analyzed quickly
3 and to know the results quickly and those
4 were not included in that group.

5 Q. And when you discussed it, it was discussed
6 with whom?

7 A. Detective or Sergeant Paul Monroe.

8 Q. It was decided not to do the victim's oral or
9 rectal swabs?

10 A. Yes.

11 Q. And you did do the blood standard from the
12 victim?

13 A. Yes.

14 Q. And for DNA purposes, you had his sample?

15 A. Yes.

16 Q. Now, there were a number of items brought and
17 marked initially from a submission
18 dealing with items from a trash bin that
19 was found in Boardman, Ohio, and they
20 were identified including napkin, dish
21 cloths, gauze, gauze, gauze, napkin,
22 washcloth, it wasn't mentioned but

2794

1 included two condoms, and keys, cell
2 phone, garage door opener, CD, chicken
3 and napkin?

4 A. Yes.

5 Q. And the latter keys, cell phone, garage door,
6 CD, the chicken and napkin, came from the
7 vehicle to the best of your knowledge?

8 A. Yes.

9 Q. That is the silver vehicle you got blood from?

10 A. Yes.

11 Q. It turned out that you testified that you did
12 submit one of the submissions from the
13 trash barrel, the gauze, correct?

14 A. Yes.

15 Q. Which would be A-4. So, what in fact you had,
16 were a series of items that appeared to
17 have had blood on it that came from a
18 trash bin?

19 A. Yes.

20 Q. And one of them was submitted to identify that
21 blood through DNA, is that correct?

22 A. Yes.

2795

1 Q. Are you aware of what the results were on
2 that?

3 A. Yes.

4 Q. And were they positive?

5 A. Yes.

6 Q. And did they match?

7 A. Yes.

8 Q. Do you know who it matched to?

9 A. Yes.

10 Q. Who?

11 MR. LEWIS: Gerardi will testify to
12 that.

13 MR. WATKINS: I withdraw that
14 question.

15 Q. The bottom line, you had a number of items,
16 bandages, napkins, wash cloths, that if I
17 cut myself, and I would submit to you all
18 of these items, and you got one of them
19 and you had a positive test showing it
20 was my blood, would you test the other
21 six or eight items?

22 A. No.

2796

1 Q. Why not?

2 A. The results on those other six items won't
3 change the fact that I have made an
4 identification already. It would just
5 give me more information, that it is
6 probably that person's blood. If I was
7 not able to get a result, for some reason
8 it was negative, then I would go on and
9 do another sample. If I made an
10 identification, it's not going to change.
11 Doing the rest of those stains will not
12 change the results I obtained.

13 Q. You would duplicate it?

14 A. Yes.

15 Q. If you have an item that is submitted to your
16 lab, is that item available to the
17 Defense if they would want to inspect it?
18 Have you had those things done in the
19 past?

20 A. Yes.

21 Q. So they, the Defense could test through their
22 own experts, correct?

2797

1 A. Yes, we would get them back to the police
2 department and they would be submitted to
3 the Defense.

4 Q. You are testing what is requested by Officer
5 Monroe, or the Prosecutor's Office, in
6 the case?

7 A. Yes.

8 Q. And in given situations such as the gauze, the
9 tape, the band-aids, the cloth, that is
10 found in a motel room or a bin by the
11 motel room, if you are requested to do
12 one and there's a finding, you don't have
13 the resources and time to do the six or
14 eight or ten others?

15 A. That is correct.

16 Q. And it would take one week to do each test
17 with one DNA examiner for each test of
18 blood for DNA?

19 A. We would combine them, naturally, but it would
20 take a week to get results on all of
21 those items.

22 MR. WATKINS: I think that is it.

2798

1 Thank you.

2 RECROSS EXAMINATION BY MR. LEWIS:

3 Q. Dale, pursuant to Mr. Watkins' question, if
4 you had six items out there, they are all
5 blood droppings on the floor, the garage,
6 and you examine one presumptively for
7 blood, you could examine them all for
8 blood, presumptively for blood, couldn't
9 you?

10 A. Yes.

11 Q. You didn't do it in this case?

12 A. Why would I do that? It tells me it could be
13 blood, but what value is that and even to
14 do a human -- so it is human blood, but
15 the things that people want to know when
16 you go to Court is whose blood is it.
17 You actually wouldn't stop. You would go
18 on.

19 Q. Your philosophy and what you are really
20 telling me is this, if I got -- you got
21 one suspect and we're looking for this
22 guy, and we have got 12 things of blood,

2799

1 we pick up one, we get one and it is
2 presumptive for blood and we analyze it,
3 you don't worry about the other 11, that
4 is what you are telling me, is you just
5 don't worry about it?

6 A. In this case --

7 Q. It is not important to you?

8 A. Not in this case, no. There may be cases
9 where you want to find out if the person
10 was leaving and you checked drops on a
11 sidewalk to see where they were headed,
12 or I could come up with scenarios where
13 it might be helpful to determine whose
14 blood that is in six different locations,
15 but I think that the agency requested
16 blood analysis to see who was bleeding
17 there and that was determined.

18 Q. The point is, they told you that Nathaniel is
19 the guy that did this, so basically, find
20 something that ties him, and that is why
21 we have the Days Inn, we have all of
22 these gauze and all this stuff, because

2800

1 we're going to place him in the Days Inn?

2 A. You know that is not true.

3 Q. It isn't true?

4 A. No. Just what you say is not true.

5 Q. We have all of the blood droppings at the
6 scene, in the garage, where supposedly
7 the crime occurred, and then we have --

8 A. They said whose blood could it be?

9 Q. Yes.

10 A. And we determined that. They didn't say to go
11 and find a certain individual's blood.

12 Q. Well, the point is, let's go get all of the
13 stuff we can find with blood on it and
14 see if one pops up with Nathaniel's blood
15 on it. That is really what we're looking
16 for?

17 A. I wouldn't say that, either.

18 Q. We're going around in circles, maybe I'm the
19 one doing the circling?

20 A. I'm trying to be honest.

21 Q. I know you are being honest, the point being
22 is when you find something, you don't go

2801

1 any further, that is basically what it
2 says here. And you have already told us
3 why you don't do it?

4 A. Yes.

5 Q. It is a waste of time and money, right?

6 A. I guess in this case, it would have been.

7 Q. How close were you to the investigation in
8 this case? It sounds like you were
9 consulting with them on a daily basis or
10 something?

11 A. It seemed like that at the beginning, three,
12 four days in a row. We asked for
13 synopsis and Detective Monroe was very
14 good in providing a very good synopsis
15 and what he believed occurred and
16 collected the items and that is how
17 things have to be done. We have to know
18 a little bit.

19 Q. When you come across a situation, you start
20 putting the pieces together?

21 A. Yes.

22 Q. It is like a huge puzzle. Sometimes the

2802

1 pieces come fast, sometimes they come in
2 different shapes and forms, whatever.
3 But when you investigate something from a
4 criminal standpoint, or whatever, we
5 never know what the final outcome is,
6 we're just on a track. There's no great
7 picture up there when we work the puzzle
8 and the pieces are right there, we know
9 what the end objective is. The pieces
10 are supposed to create the picture. If
11 you will pick the right pieces, it may
12 create a different picture. That is the
13 point, you cover all the bases, that is
14 the idea, I would think. This is a
15 little bit more narrowing. Once you have
16 a hypothesis that is what you pursue and
17 the more you believe it, that's the
18 direction you go?

19 A. Yes.

20 MR. LEWIS: Thank you.

21 MR. WATKINS: No further questions.

22 THE COURT: Thank you.

2803

1

BRENDA GERARDI

2

being duly sworn according to law, on her oath,

3

testified as follows:

4

DIRECT EXAMINATION BY MR. WATKINS

5

Q. Good afternoon, Brenda.

6

A. Good afternoon.

7

Q. Would you -- I know you speak softly. Would

8

you tell the Jury your name and where you

9

work?

10

A. My name is Brenda Gerardi. I work for the

11

Ohio Bureau of Identification and

12

Investigation.

13

Q. Would you tell the Jury where you received

14

your education?

15

A. I have a Bachelor of Science degree in Biology

16

from Kent State University.

17

Q. And you became employed at BCI&I in Richfield

18

when?

19

A. In 1997.

20

Q. And where were you employed, as far as

21

position, initially?

22

A. Forensic scientist in the serology, DNA

2804

1 section.

2 Q. What do you do as a forensic scientist in
3 serology, briefly?

4 A. I analyze physical evidence for the
5 identification of physiological fluids,
6 such as blood, urine, feces, semen and
7 saliva.

8 Q. You have been doing that as has Dale Laux and
9 others, working for the Attorney
10 General's Office?

11 A. Yes.

12 Q. And then, there came a time that the Attorney
13 General in London initially, I want to
14 say around 1999, 2000, started a DNA lab
15 for the State of Ohio?

16 A. That is correct.

17 Q. And who is that office under?

18 A. The Attorney General's Office.

19 Q. The DNA lab?

20 A. It is run by Elizabeth Bensinger.

21 Q. And wasn't there another?

22 A. Dr. Rodger Conn.

2805

1 Q. Isn't he still with the office?

2 A. He's now our DNA lab director.

3 Q. And your laboratory then expanded to include
4 Richfield?

5 A. That is correct.

6 Q. And were you trained in DNA analysis?

7 A. Yes. We specialized in DNA analysis. It took
8 about a year and a half of written exams,
9 qualifying exams. We had proficiency
10 tests that were graded by an outside
11 agency.

12 Q. And how many DNA forensic scientists are there
13 working for the Attorney General's
14 Office, approximately?

15 A. I believe there's around 12.

16 Q. And how many are at the Richfield office?

17 A. Five.

18 Q. And is your laboratory certified nationally?

19 A. Yes.

20 Q. And would you explain what quality control and
21 what things have to be done to make sure
22 your laboratory is functioning according

2806

1 to standard?

2 A. We have guidelines for the certification that

3 are all written in manuals that we must

4 follow. We are audited by other

5 laboratories to insure the reliability of

6 all our results and our testing and our

7 procedures.

8 Q. And when did you go on line personally doing

9 DNA?

10 A. I believe it was March of 2000.

11 Q. And approximately how many times have you been

12 qualified and have testified in Common

13 Pleas Court in Ohio?

14 A. For DNA?

15 Q. Yes.

16 A. Twice.

17 Q. And for other testing, approximately?

18 A. I have testified 15 times in Ohio.

19 Q. And when you do a DNA analysis, would you just

20 explain to the Jury exactly what you are

21 doing?

22 A. I break it up into a four step procedure. We

2807

1 I have procedures that we follow through a
2 manual. But to give it to you in four
3 stages and the first stage is extraction,
4 which is when I remove the DNA from the
5 cellular material or stain. The cells --
6 the second step would be quantification
7 step which is to allow me to know how
8 much DNA I have extracted from the cells.
9 The third step would be amplification, and
10 that is a chemical Xerox process that
11 allows me to make millions of copies of a
12 target area that we're going to do the
13 DNA analysis on. The final procedure
14 would be the DNA analysis itself, which
15 the date that it is retrieved allows me
16 to make comparisons from a known
17 reference sample to an unknown forensic
18 sample to determine whether or not an
19 individual can be included or excluded as
20 a potential donor to the sample found at
21 a crime scene.

22 Q. What is DNA?

2808

1 A. DNA stands for deoxyribo nucleic acid, and it
2 is like a blueprint or is a code of
3 life -- a code for life, and it is found
4 in all cells, with the exception of red
5 blood cells. It is unique to each
6 individual except for identical twins.

7 Q. And when you look for DNA in forensic samples,
8 what items would have DNA? That is, what
9 things do I have and you have, that can
10 be traced by DNA analysis?

11 A. All cells have DNA, so any type of transfer
12 from one individual to another, would
13 leave skin cells, there are saliva will
14 have DNA, if it was a semen sample found
15 in a vaginal cavity, I can retrieve the
16 DNA from that. Any kind of transfer,
17 even a fingerprint could leave DNA.

18 Q. Which means your sweat would leave DNA?

19 A. Exactly.

20 Q. How about your hair?

21 A. Yes.

22 Q. All of the things that we have physiologically

2809

1 speaking, I don't want to say all, I'm
2 sure we could find some things that
3 don't. It goes through our bodies and it
4 is a permanent record, so to speak, if we
5 can retrieve it?

6 A. Yes, it is a permanent record and it is the
7 same permanent record in each cell of the
8 body. So for example, a saliva cell
9 would have the same exact DNA as say, a
10 skin cell in an individual's body, so you
11 can compare one to the other.

12 Q. Now, when you test the DNA, or for DNA, are
13 there different types of methods that are
14 used?

15 A. Definitely, there's different types of
16 methods. It has been developed through
17 the years and has gone through stages,
18 with the final, and I should say finally,
19 but the one we're using today, is called
20 STR, short tandem repeat procedure, that
21 is the type of DNA that we do and it is
22 processed through a procedure called PCR,

2810

1 which is polymerase chain reaction, so
2 that is the most common, the most
3 advanced DNA that we have been trained
4 with. I'm sure there's more upcoming.

5 Q. Do other laboratories throughout the United
6 States use STR and PCR?

7 A. Yes, it is widely accepted and used with other
8 agencies.

9 Q. And it is accepted in the scientific community
10 as reliable?

11 A. Reliable and used by the FBI.

12 Q. And the test has been shown to be valid and
13 does what it is supposed to do?

14 A. That is correct.

15 Q. Now, when you would, say for example, get
16 blood off of a shirt or a sweater, and
17 the blood would come from a third party,
18 not the owner, would you find often that
19 the person, I have this jacket on, that
20 the person wearing the sweater or wearing
21 the jacket, will have cells that they
22 would shed?

2811

1 A. Cellular debris, skin cells do contain the
2 only DNA.

3 Q. And therefore, if somebody would cut
4 themselves and bleed on me or on the
5 sweater, would you have the combination
6 of two separate person's DNA?

7 A. That is correct. I can identify in some cases
8 both of the individuals in the mixture.

9 Q. And it would be considered a mixture?

10 A. That is correct.

11 Q. And in the mixture, can you at times with your
12 testing, identify a major and minor
13 contributor?

14 A. Yes, sometimes it is possible to separate the
15 major and the minor within the
16 interpretation guidelines that we have.

17 Q. And what is a major contributor?

18 A. A major contributor would be the person that
19 you would find the most in the stain, if
20 it was a mixture of blood and skin cells,
21 in my experience, I have seen that the
22 blood overpowered just the minor skin

1 cell shedding on the clothes, because
2 we're only cutting out that stain, I
3 would see as the major as the blood
4 stain.

5 Q. When you have a mixture or when you have DNA
6 on its own from one individual, are you
7 able to quantify in a statistical sense,
8 the frequency of having that same pattern
9 in other population or other persons in
10 the population?

11 A. Yes, I am. I can do that also for a mixture,
12 as long as I can, like we're talking
13 about, separate the major and the minor,
14 I can do it with a frequency of the major
15 and of the minor, if possible, to
16 separate them out.

17 Q. And will the frequencies often differ?

18 A. Frequencies will differ, because everybody is
19 different, so your DNA type would occur
20 different at a different frequency than
21 somebody else's, yes.

22 Q. Now, when you do the testing itself, there's a

2813

1 term called loci?

2 A. It could be loci, sometimes we say location.

3 Q. And what does that mean? What location or

4 locations are involved in the testing?

5 A. We talk about locations for DNA, we have

6 several. DNA is a very long string-like

7 molecule that has a ton of information.

8 There's 99 percent of our DNA is exactly

9 the same as another person's DNA, which

10 seems kind of odd, but there's that one

11 percent that is different and that is

12 what makes each person unique. It is

13 that area that we're looking at to do our

14 forensics to do the analysis. We don't

15 need to compare the 99 percent that is

16 exactly the same. We want the unique

17 areas, the location that we're speaking

18 of is the location on the chromosome.

19 Those are the houses for the DNA in your

20 cells, and that location is found on a

21 specific cellular chromosome. When we

22 speak of location, we have 13 core

2814

1 locations that we look at on a
2 static chromosome.

3 Q. I take it the more that match, location, the
4 higher the frequency?

5 A. The more that match the more of the 13
6 locations that we have, the frequency
7 numbers will be higher, yes.

8 Q. Now, from your experience, you know the
9 population of the world?

10 A. Population of the world is around six point
11 one billion.

12 Q. And will your results in DNA testing, how high
13 a group do they go? For example, do they go
14 over six point one billion to one?

15 A. Very much so, billions times larger than the
16 world population.

17 Q. And will you get into trillions and
18 quadrillions?

19 A. Trillions, quadrillions and quintillions.

20 Q. It is fair to state that statistically
21 speaking, you can narrow a finding down
22 to one person on earth, as a reasonable

2815

1 conclusion?

2 A. That is correct, using statistics.

3 Q. Now, I would like you to explain to the Jury
4 what you are seeing and looking at when
5 you are doing this testing. What are you
6 seeing and doing so they can understand
7 what you are looking at?

8 A. What I am seeing, are our instruments just
9 measure length of DNA, and we actually
10 visualize peaks, and these peaks are
11 transferred into what we call calls, and
12 those are designated a number at each
13 location. The number that is designated
14 itself has a frequency, so at one
15 location I can determine a frequency. So
16 if you have a location -- and let me
17 backtrack and explain to you that a
18 location will have both two parts to it,
19 a donor from your mother and a donor from
20 your father, so most people understand
21 that you will have two parts to a
22 location. So, in each part will have its

2816

1 own frequency, so if the first part has
2 frequency of one in ten, and the second
3 part has a frequency which means it will
4 happen in one in ten people, we multiply
5 those together and we get one in 100 and
6 that is one location. So each location
7 these numbers will multiply and we'll get
8 these huge numbers of frequencies to have
9 these in combination. It is very much
10 like a lottery to have these come
11 together in the exact manner to make a
12 match.

13 Q. Now, I wanted to refer you to a case involving
14 a subject by the name of Nathaniel E.
15 Jackson, and victim by the name of Robert
16 Fingerhut. Did you do multiple testing
17 regarding these subjects in requests from
18 the Howland Township Police Department?

19 A. Yes, I did.

20 Q. And did you bring with you today, items that
21 you had coming to town?

22 THE COURT: Excuse me, do you have a

2817

1 question?

2 JUROR: Can we take a break before
3 we start going through the evidence?

4 THE COURT: Sure. Let's take a ten
5 minute break. You are not to discuss anything or
6 form any opinions.

7 (Court in Recess at 2:20 p.m.)

8 (Resumed in Open Court at 2:45 p.m.)

9 CONTINUING DIRECT EXAMINATION BY MR. WATKINS:

10 Q. Brenda, on the break I put before you a number
11 of Exhibits, and before we go to your
12 reports, I would like you to go through
13 the Exhibits that were part of your
14 analysis and what you can identify. And
15 would you do that, please?

16 A. First Exhibit No. 255, I can recognize as by
17 our BCI case numbers as the stain from
18 the floor, found in the front door
19 hallway. State's Exhibit 387, I can
20 identify again by BCI case number, and my
21 initials and the date I opened it and
22 sealed it. State's Exhibit 386, I can

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1 identify this by the BCI case number and
2 as the stain above the trunk release in
3 the car. State's Exhibit 385, I can
4 identify again by our BCI case number and
5 it is the stain from the visor. State's
6 Exhibit 390, I can identify by the BCI
7 case number as a stain from the lower
8 right back of the jacket. State's
9 Exhibit 294, I can recognize by the BCI
10 case number as the original packaging of
11 it. It just says dumpster behind the
12 Days Inn; it would be the gauze, the
13 original packaging. And State's Exhibit
14 389 is the gauze, I can recognize that by
15 the BCI case number. State's Exhibit 351
16 is the standard collected from Daniel --
17 Nathaniel Jackson and I can recognize
18 that by our BCI case number. State's
19 Exhibit 265 is the blood standard of
20 Robert Fingerhut and I can recognize that
21 by our BCI case number as the original
22 packaging. And State's Exhibit 388 is

2819

1 the retained evidence of the blood
2 standard of Robert Fingerhut. I can
3 identify that by our BCI case number.

4 Q. Of all those items, which one did you just
5 have marked, just marked that you brought
6 with you?

7 A. I brought with me, State's Exhibit 390, which
8 was a swabbing from the lower right back
9 of the jacket. That was item eight.

10 Q. All of the items that you tested, you have
11 before you?

12 A. That is correct.

13 Q. And I'm going to hand you State's Exhibit
14 386-A. Can you identify it?

15 A. Yes, I can identify this as a true and
16 accurate copy of my original report.

17 Q. And would you go through and explain what, and
18 by the way, again how long does it take
19 you to test an item?

20 A. Start to finish, it would be at least a week.

21 Q. And you would have to run a test on the
22 Defendant and the victim?

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1 A. Yes, for comparison.

2 Q. And then you would take the unknown?

3 A. That is correct.

4 Q. And then you would see if they compare?

5 A. Right.

6 Q. Now, are there times when you will come back
7 with no results?

8 A. That is correct. If there was a limited
9 sample or there was something wrong with
10 the sample or just for some reason, the
11 sample did not work, amplify, the stages
12 that I explained to you earlier.
13 Sometimes there's chemicals involved,
14 that the bleach was involved, our DNA
15 could be destroyed. I need to go back
16 sometimes and do more evidence, yes.

17 Q. There will be occasions that you may run a
18 test where -- say by the way, do you have
19 any more samples from that area?

20 A. Yes.

21 Q. So you could test again, to see if you come up
22 with something?

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1 A. Yes, and that has been done.

2 Q. Now, would you go through what you did in the
3 first analysis, which is, I want to refer
4 you to, and for purposes of the record,
5 my understanding is that the first
6 analysis was done by you on 3-5-02?

7 A. That was the completion date, the date that I
8 typed this report.

9 Q. But when did you do the analysis?

10 A. It would be -- I would have to refer to my
11 notes for exact dates, but primarily
12 weeks before this date.

13 Q. Your first report was typed or prepared by you
14 on 3-5-02?

15 A. That is correct.

16 Q. That was sent to the police and the Prosecutor
17 in this case?

18 A. That is correct.

19 Q. And would you go through what you did and your
20 results?

21 A. We chose what items to be worked, and I had
22 chosen the one swab from inside the

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1 house, a swab from the visor in the car,
2 and gauze found in a dumpster outside of
3 the hotel room. I also did DNA analysis
4 on two standards, one of Nathaniel
5 Jackson and one of Robert Fingerhut, to
6 do the comparison from the unknown to the
7 known.

8 Q. So, the first report covers testing of a swab
9 from the home of Robert Fingerhut?

10 A. That is correct.

11 Q. And also a visor, some blood that was swabbed
12 from the visor from the silver Chrysler
13 automobile?

14 A. That is correct.

15 Q. And also a piece of gauze that was alleged to
16 have been found at the dumpster behind
17 the Days Inn?

18 A. That is correct.

19 Q. And would you tell the Jury what you found as
20 to the swab in the house, the first one?

21 A. The swab in the house was consistent with the
22 DNA profile of Robert Fingerhut.

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1 Q. So the swab in the house, was tested by you,
2 lifted as came back to the victim, Robert
3 Fingerhut?

4 A. Yes, I cannot exclude him as being the donor
5 of the blood found on the swab from the
6 house.

7 Q. As to item two, would you --

8 A. On the visor, I found a mixture that was
9 consistent with both Nathaniel Jackson
10 and Robert Fingerhut. So therefore, I
11 cannot exclude either as being possible
12 donors to the mixture.

13 Q. So, the swab of the blood was a mixture where
14 you could not exclude Nathaniel Jackson
15 or Robert Fingerhut, is that correct?

16 A. That is correct.

17 Q. And do you have the statistical analysis in
18 your report, regarding those?

19 A. Yes, I do.

20 Q. Would you give your findings?

21 A. Do you want the statistic?

22 Q. Yes, as to item --

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1 MR. CONSOLDANE: I'm going to
2 object. She's been qualified as an expert in DNA,
3 but not in statistics. I would object to her
4 giving statistical numbers.

5 THE COURT: Isn't that part of what
6 a DNA expert does?

7 MR. CONSOLDANE: She's expert in
8 testing, not in statistics. Can we approach?
9 (In-chamber with counsel and witness, Brenda
10 Gerardi.)

11 THE COURT: We're in-chambers out of
12 the hearing of the Jury. The Defense waives
13 presence of Defendant?

14 MR. CONSOLDANE: Yes.

15 THE COURT: What is your objection?

16 MR. CONSOLDANE: This young lady has
17 been qualified as an expert in DNA. I understand
18 she knows how to run the test, how to perform the
19 test, how to read the test, but she has not been
20 qualified as a professional in the field of
21 statistics, and that is an entirely different
22 presented animal. And to be able to give numbers

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1 like that in front of a Jury is -- it is out of her
2 field and it shouldn't be allowed. It is only
3 someone that is an expert in statistics that can
4 testify as to the numbers.

5 THE COURT: What is your response?

6 MR. WATKINS: You have testified
7 previously, as to your reports?

8 THE WITNESS: Yes.

9 MR. WATKINS: The reports you
10 reported? The report that you are testifying
11 about, is a report that you prepared?

12 THE WITNESS: Yes.

13 MR. WATKINS: And it is a standard
14 report?

15 THE WITNESS: Yes.

16 MR. WATKINS: That you do through
17 your training?

18 THE WITNESS: Yes.

19 MR. WATKINS: As a DNA expert?

20 THE WITNESS: Yes.

21 MR. WATKINS: And as part of your
22 training, and a part of your scientific work, you

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1 give frequencies that you have calculated through
2 the location of various loci?

3 THE WITNESS: It is a formula that
4 is produced by the FBI and we're trained on how to
5 use this formula. We took a statistics course on
6 this to determine frequency. So, I personally
7 don't do the math. We're trained specifically on
8 the statistics that we do.

9 MR. WATKINS: So --

10 MR. CONSOLDANE: I think that should
11 have been put on. I'm sorry, go ahead.

12 MR. WATKINS: Your training in
13 statistics and the methodology you use, is accepted
14 in the scientific community?

15 THE WITNESS: Yes.

16 MR. WATKINS: And you recall
17 calculations, are a result of your training and
18 course work in statistics?

19 THE WITNESS: Yes.

20 MR. WATKINS: And you feel that
21 those numbers that you are given, you have given,
22 are scientifically based through your training and

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1 are accepted in the practice as far as your
2 testimony here concerning DNA analysis?

3 THE WITNESS: Yes.

4 MR. WATKINS: Thank you.

5 MR. CONSOLDANE: What kind of course
6 in statistics did you take?

7 THE WITNESS: I took a course, it
8 was by Columbus State University, or I'm sorry,
9 Columbus Community College, through BCI allowed me
10 to take that, plus we had a known statistician from
11 California, I believe, Charles Brenner came to us,
12 personally, to give us a statistics course on how
13 to do forensic statistics and he's world-wide
14 known.

15 MR. CONSOLDANE: How long was this
16 course that you took at Columbus Community College?

17 THE WITNESS: It was a day.

18 MR. CONSOLDANE: One day course?

19 THE WITNESS: Yes.

20 MR. CONSOLDANE: And how long was
21 the course that you had with this expert that came
22 in?

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1 THE WITNESS: That was also a day,
2 but that does not cover all of the statistics
3 training that I have had.

4 MR. CONSOLDANE: What other
5 statistics training have you had?

6 THE WITNESS: Through out the whole
7 training of the two years that I have had --
8 throughout the training for two years, every case
9 that we work we have a statistic frequencies that
10 we're doing the math. We have to read articles on
11 how the data basing has been produced through the
12 FBI, and we also have the FBI's manuals on how they
13 have come up. Now I have not committed to memory
14 on how they have come up with their data base and
15 how the frequencies are collected, because those
16 are still ongoing.

17 MR. CONSOLDANE: That is the point
18 I'm making. You really don't know how they come up
19 with them. You just read a manual and apply to
20 them. If you apply it wrongfully, you end up with
21 the wrong statistics.

22 THE WITNESS: FBI data base that

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1 comes through our computer, that is an FBI computer
2 and that cannot be tampered with. We actually log
3 in our report and it generates the numbers for us.
4 The FBI does it.

5 MR. CONSOLDANE: Then you didn't
6 generate this number yourself, it was generated by
7 someone else?

8 THE WITNESS: It is a computer
9 generated formula.

10 MR. CONSOLDANE: That is hearsay if
11 she didn't do it.

12 THE COURT: Here's the way I see the
13 thing.

14 MR. WATKINS: There's case law on
15 this.

16 THE COURT: I know there's case law.
17 The Courts of Ohio have accepted it. I personally
18 have problems with it, because I think the
19 foundation material upon which it is based is not
20 as complete as it could be, but that may not be
21 even a valid argument. The manner in which it is
22 done, you only run certain portions of the total

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1 that could possibly be run, right? You don't run
2 the DNA sequence out --

3 THE WITNESS: No, Sir.

4 THE COURT: That would be
5 economically impossible.

6 THE WITNESS: Right.

7 THE COURT: What the Courts have
8 accepted is that the amounts that they do gets it
9 into the statistics of having a probability in
10 favor of being correct. The argument that this
11 lady or anyone else who does this is relying on
12 someone else's statistics. Every time we get a
13 mortality table in there, we're doing the same
14 thing. You tell the Jury that life expectancy is
15 such and such. We rely on tables that are accepted
16 as being valid in our daily lives all the time. It
17 has been accepted in the Courts of Ohio. I see no
18 reason why this lady is not as qualified as any
19 other DNA expert to testify. Part of her job, part
20 of her training is to utilize those statistics, and
21 to come up with a statistical analysis based on the
22 findings that she's had in this particular case. I

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1 think your argument is better put to the methods
2 used. That O.J. Simpson trial, that one attorney
3 from New York, he tore them apart on the
4 methodology used, but on the basis of your
5 objection, at this point I have to overrule it.

6 MR. CONSOLDANE: I want to note my
7 exception. I think that number one, that she's
8 relying on somebody else's work product which is
9 not subject to cross examination.

10 THE COURT: That's entirely correct.

11 MR. CONSOLDANE: And secondly, that
12 she doesn't have the admitted expertise, just two
13 days and some other work to be able to correctly
14 give what the statistics should be in the case.

15 THE COURT: I doubt if there's a
16 person in the United States that could meet that
17 criteria.

18 MR. CONSOLDANE: Then we shouldn't
19 be allowed to use DNA in Courts anyhow. It is as
20 spurious as polygraph machines.

21 THE COURT: It is a very valid
22 scientific thing, but it would cost a million bucks

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1 to do it, so there was absolutely no question about
2 the results, but the probabilities are on what
3 she's doing, the Court said it is enough to rely
4 on.

5 MR. WATKINS: And that is why the
6 Defense can have their own witnesses if you have
7 contest on DNA. Ohio allows to present whatever
8 statistical evidence they have.

9 THE COURT: This guy doesn't happen
10 to be O.J. Simpson.

11 MR. WATKINS: There are indigent
12 experts at times. This Court has been generous in
13 its appointment throughout the years.

14 THE COURT: That is the Court's
15 ruling.

16 (End of in-chamber discussion.)

17 Q. (By Mr. Watkins) Brenda, you indicated that
18 the visor had a mixture consistent with
19 the contributions from Robert Fingerhut
20 and Nathaniel Jackson, is that correct?

21 A. That is correct.

22 Q. And on the visor, what were your conclusions?

2833

1 A. I need the report.

2 Q. Which report do you have?

3 A. I have the original report. I would need the
4 supplemental one.

5 Q. Let's go to the gauze. That is on that
6 report?

7 A. That is correct.

8 Q. Item three, would you tell the Jury your
9 results of the statistical information
10 you give in the report regarding a
11 comparison of the gauze, which was
12 identified by you as being the gauze from
13 the dumpster behind the Days Inn, and the
14 Defendant and/or Robert Fingerhut?

15 A. I have identified the gauze, as being
16 consistent with Nathaniel Jackson,
17 therefore, it means that Nathaniel
18 Jackson cannot be excluded as being the
19 source of the blood found on the gauze.

20 Q. There's only one single source on the gauze?

21 A. One source, not a mixture.

22 Q. And that was blood that was analyzed by Dale

2834

1 Laux?

2 A. Yes.

3 Q. And given to you?

4 A. That is correct.

5 Q. And what frequency did you find using the

6 BCI -- I'm sorry, the FBI data base?

7 A. Using the FBI data base, I can tell you that

8 but and only one in 45 quintillion, 170

9 quadrillion people in the Caucasian

10 people will be found to have this profile

11 in the African American population, I

12 would expect to only find one in 29

13 quadrillion, 860 trillion people. In the

14 Hispanic population, I would expect to

15 find that profile on the gauze, one in 22

16 quintillion, 400 quadrillion.

17 Q. Can you identify number 286-C?

18 A. I can identify 286-C as being a true and

19 accurate copy of my supplemental report.

20 Q. And that is dated when?

21 A. Dated 3-28-02.

22 Q. And what did you analyze for that?

2835

1 A. No further analysis was done. I just did not
2 do a statistic on the mixture on the
3 visor from my first report, so I did a
4 mixture statistic for the visor on the
5 supplemental report.

6 Q. The blood stain that Dale Laux gave you, which
7 was put on a DNA card was compared with
8 Robert Fingerhut and Nathaniel Jackson?

9 A. Yes, and I believe Dale cut out the stain or
10 swabbed the visor, and sealed those and
11 gave them to me for DNA analysis.

12 Q. Which you have identified?

13 A. Which I have identified as a mixture of both
14 Nathaniel Jackson and Robert Fingerhut.

15 Q. And again, what were the results regarding
16 frequency?

17 A. For frequency in the Caucasian population, I
18 would expect to find someone that could
19 be a donor to this mixture, one in 16
20 million 10,000. For the African-American
21 population, I would expect to find one in
22 five million, 491 thousand. That

2836

1 statistic would mean only one in five
2 million 491 thousand people would be a
3 contributor, could be a contributor to
4 that mixture. In the Hispanic
5 population, you would expect to find for
6 this mixture profile, one in six million,
7 835 thousand people. Just to help you
8 understand, one in that many people would
9 be expected to be found with the profiles
10 that would fit into that mixture.

11 Q. Now, the mixture, knowing that it was blood
12 that was found on the visor, does that
13 mean in your analysis that we have the
14 blood of both parties identified, Robert
15 Fingerhut and Nathaniel Jackson?

16 A. No, it just means there's a mixture of blood
17 and something else or it could be blood
18 and blood. I cannot tell you the
19 mixture, quantity, however I can tell you
20 that there's a mixture that I cannot
21 separate out major and minor and
22 therefore, have a true mixture, so not

2837

1 one type overpowers the other. They are
2 in almost equal proportions on the visor.

3 Q. If one were driving that car, assume that the
4 victim was driving that car, and was
5 using that car, and he would continually
6 move the visor with his hands, would you
7 expect to have cells on that visor?

8 A. I would expect to have cells, yes.

9 Q. And if the Defendant would go in that car, and
10 with blood on his hand move the visor,
11 and it went on the visor, you could have
12 the cells of Robert Fingerhut with the
13 blood of the Defendant?

14 A. That is correct.

15 Q. Now, would you please go onto your last
16 report, and I'll hand that to you.
17 State's Exhibit 286-D. Are you able to
18 identify that?

19 A. I can recognize this as a true and accurate
20 copy of my supplemental two report.

21 Q. And would you explain, and by the way, that is
22 dated 6-17-02. And you are now doing

2838

1 additional testing?

2 A. Yes.

3 Q. And would you tell the Jury exactly what you
4 are doing?

5 A. I did the stain from the jacket of the victim,
6 on the right back side of the jacket, a
7 blood stain, and I also did a blood stain
8 found from the trunk release inside the
9 car. I also found and compared those
10 again to the two standards that were
11 given to me of Nathaniel Jackson and
12 Robert Fingerhut.

13 Q. As to the jacket, and that would be the jacket
14 you received from Howland police, the
15 baseball jacket?

16 A. Yes.

17 Q. Continue. What were your results?

18 A. My findings were that the DNA profile from the
19 jacket was consistent with Robert
20 Fingerhut; therefore, Robert Fingerhut
21 cannot be excluded as a source of the DNA
22 on his own jacket.

2839

1 Q. Now, you also took a swab from the silver
2 Chrysler automobile that Dale Laux had
3 gotten?

4 A. That is correct.

5 Q. And that was from the trunk release area of
6 the silver Chrysler?

7 A. That is correct.

8 Q. And that was a swab of blood?

9 A. That was a swab of blood.

10 Q. And that was given to you and identified, you
11 have it before you?

12 A. That is correct.

13 Q. And would you tell the Jury what your results
14 and statistical information, based on the
15 FBI data base are?

16 A. I did develop a mixture on the stain from
17 inside the trunk release, however, I can
18 separate out major and minor and the
19 major profile is consistent with
20 Nathaniel Jackson and the minor was
21 consistent with Robert Fingerhut.
22 Therefore, Nathaniel Jackson cannot be

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1 excluded as a major type of DNA found on
2 the trunk release, and Robert Fingerhut
3 as the minor source of DNA found on the
4 trunk release, and because I separated
5 out truly into major and minor, I do a
6 statistic on the major portion found on
7 the trunk release and those numbers are
8 as follows. In the Caucasian population,
9 one in quintillion, 170 quadrillion
10 people; in the African-American
11 population, one in 29 quadrillion, 860
12 trillion; in the Hispanic population, you
13 would expect to find a profile of one in
14 22 quintillion, 400 quadrillion.

15 Q. So, assuming that the Defendant were
16 African-American, it would be one in over
17 29 quadrillion?

18 A. That is correct.

19 Q. Which would be 15 zeros?

20 A. 15 zeros.

21 MR. WATKINS: Thank you very much.

22 CROSS EXAMINATION BY MR. LEWIS:

2841

1 Q. How long have you been with BCI&I?

2 A. Around five and a half years.

3 Q. And I am curious about the it takes one week
4 to do an analysis, DNA analysis, is that
5 what we're talking about, one object, if
6 you take one cotton swab and try to have
7 a material, I don't care whether it is
8 If you have saliva or blood, whatever it is, it takes
9 a week to do that analysis, is that
10 correct?

11 A. It is a generalization to say one week, but
12 when an item comes into the office, it
13 goes to our serology section first,
14 therefore, that identification of blood
15 or urine, feces, is not what I am talking
16 about, it takes a week for the DNA
17 analysis and it is not just one thing,
18 I'll work a whole case together at one
19 time to take one week. Does that answer
20 your question?

21 Q. That was good, but, what I'm trying to figure
22 out is, there's a big issue about time

2842

1. consumption here and I got the impression
2. it takes one week to do an analysis, so
3. that is 52 tests a year for one human
4. being, forensic scientist, am I wrong on
5. that?

6. A. Yes.

7. Q. Do it for me one more time. Let me ask you
8. this question. If you have six swabs and
9. you are looking for DNA, can you do all
10. six at the same time, put it through the
11. steps?

12. A. They are through the steps, not at the same
13. time, but in sequence.

14. Q. You can only handle one at a time, is that
15. what you are telling me?

16. A. That is correct. One open at a time.

17. Q. And let me ask you this simple question. How
18. much time is consumed by whatever
19. material has to be worked with, or
20. whatever, when you say a week what I am
21. having a hard time with, are you doing
22. one swab because of so many steps it

2843

1 takes you one week to process?

2 A. I can tell you about the process if you would
3 like.

4 Q. I would really like the time. I can
5 understand the process. What I'm trying
6 to do is break down the time. It has
7 already been said it takes a week to
8 process this. Mr. Dale Laux told us and
9 Mr. Watkins has emphasized it takes a
10 week do each one of these and that is
11 what I'm trying to figure out. Does it
12 take a week for each one of these?

13 A. It takes a week to do the stages that I have
14 explained. The extraction stage through
15 the analysis and interpretation of that
16 data would take me approximately a week.

17 Q. The week, are you constantly working on that
18 eight hours a day, then?

19 A. No.

20 Q. Would you give me an idea of does the material
21 have to combine with something, and just
22 sit for awhile?

2844

1 A. Yes, Sir, that is what happens is the
2 extraction step, we add things to it. To
3 clean up the DNA to extract it we extract
4 it, that takes time, it takes hours,
5 sometimes overnight. The next day, we
6 finish the extraction, and then the
7 amplification takes time. The
8 quantification step that I said takes
9 time. The instrument itself that we use
10 to do the DNA analysis. It is one-half
11 hour a sample, so if I have 48 samples on
12 my tray, then it is going to take me two
13 days.

14 Q. So, suffice to say, a lot of it is consumed by
15 stages of the processing of it itself, it
16 is not handled by you, humanly it's a
17 staging process?

18 A. That is correct.

19 Q. The DNA, when we got to the end of the direct
20 examination, or actually the middle of
21 it, we're talking about DNA, comes from
22 skin cells, saliva, hair. It can come

2845

1 from pubic hairs, it can come from blood
2 cells?

3 A. That is correct.

4 Q. And come from white blood cells?

5 A. White blood cells.

6 Q. All of the component -- actually blood cells
7 are the component of our whole body in
8 one form or another?

9 A. DNA is found in all types of cells, with the
10 exception of red blood cells.

11 Q. Teeth?

12 A. Yes, bone cells also.

13 Q. The interesting thing is, tell me if I am
14 wrong, is when you actually do the
15 extraction, the DNA, you don't actually
16 know what substance you are working with,
17 whether it be blood, saliva, be it the
18 sweat from the hand, you don't actually
19 know where it came from, except from an
20 initial report, right?

21 A. Well, if it is a blood standard from the
22 subject collected from the department, I

2846

1 know that that is the blood sample. If
2 it is a blood stain that was identified
3 by a previous analyst or myself, for
4 example on the visor, we know that we're
5 working with at least a human blood
6 stain.

7 Q. So that the point being, is that on the visor,
8 we're talking about a human blood stain?

9 A. Right.

10 Q. And that is what you were given, right?

11 A. Exactly.

12 Q. So, it very well could be that as you
13 indicated here, the mixture, whatever the
14 figures are, one in umpteen number of
15 zeros, that could have been the blood of
16 Mr. Fingerhut and this could have been
17 the blood of Mr. Nathaniel Jackson?

18 A. It could be a mixture of both, yes.

19 Q. And logically, I suppose, if someone were to
20 come in contact with blood on another
21 human, clothing, the hands, whatever, I
22 got it on my hand and my hand was cut,

2847

1 you may end up with a mixture, you took
2 well account it off the end, right?

3 A. If I swabbed your hand and you had somebody's
4 blood on you?

5 Q. Yes, you recall cut -- I am cut, I touch it
6 where I am cut and I deposit it, you
7 might get a mixture?

8 A. That is correct.

9 Q. And in this case you did get a mixture in
10 regard to what was on the visor in the
11 car?

12 A. That is correct.

13 Q. And the other DNA in regard to the blood spot
14 that was one found on the floor in the
15 hallway of a residence, correct?

16 A. That is correct.

17 Q. The statistical when we throw out all of these
18 umpteen number of zeros, you indicated
19 that really comes from the FBI data base,
20 is that correct?

21 A. The FBI data base has a computer system that
22 we utilize, and the formula, for all of

2848

1 these frequencies has already been
2 generated and well accepted throughout
3 the forensic community, and we add our
4 information, our data to that, and it
5 generates the frequency that you have
6 been given today.

7 Q. It is kind of like a little calculator, you
8 want to multiply 12 times 12 times 12,
9 you put it in and punch the button and it
10 gives you the number?

11 A. Pretty much, yes.

12 Q. So, you don't really do the analysis yourself,
13 you are putting the input data in and the
14 computer tells you exactly what the
15 statistical thing is and it is in the
16 report?

17 A. Yes, I don't do the statistics. I do the
18 analysis to get the data, to do the
19 statistics.

20 Q. So this, all of these big zeros, this down
21 here is really out of the computer data
22 base from the FBI?

2849

1 A. That is correct.

2 Q. And you are the one who fed the data in,
3 correct?

4 A. That is correct.

5 Q. And the loci are really -- you said there's a
6 total of 13?

7 A. 13 location, plus a gender site, that will ask
8 me if my sample is male or female.

9 Q. For each loci, are there two things, you said
10 male and female or just one?

11 A. At each location, you can have up to two types
12 at each location. It could be what we
13 call a homozygote, which is one type at
14 that location. All it means is that both
15 of your two types match, from your Mom,
16 from your Dad, gave you the same type.
17 So we just write one number instead of
18 the two.

19 Q. Where was that second report? We got a
20 mixture from the visor, correct?

21 A. From the visor.

22 Q. We have singly, the gauze, that is just

2850

1 strictly Nathaniel Jackson?

2 A. That is correct.

3 Q. I'm going to use the figure, it is blowing me
4 away. It is 15 zeros and it is Nathaniel
5 Jackson on the gauze, and then the drop
6 in the hallway of blood, in the hallway
7 of the home, that was Robert Fingerhut?

8 A. That is correct.

9 Q. It was not a mixture?

10 A. It was not a mixture.

11 Q. And on the supplemental report, you also did
12 the -- you tested for the jacket which
13 was the was that the Cincinnati Reds
14 jacket?

15 A. The jacket was in firearms. I went to collect
16 my samples, I didn't have the whole
17 description of the jacket.

18 Q. And the one, it was the jacket and the inside
19 of the car, correct?

20 A. Yes.

21 Q. And the jacket came out as Robert Fingerhut?

22 A. That is correct.

2851

1 Q. The inside of the car came out as --

2 A. The major source of the DNA, Nathaniel

3 Jackson.

4 Q. And the minor source was?

5 A. Robert Fingerhut.

6 Q. Once again, contact with blood, let's say I

7 had blood all over me, and I was there

8 and I was cut, I could pick it up all

9 over the place, and wherever I went,

10 here, grabbed that, I could put the

11 mixture anywhere, right?

12 A. You could put the mixture anywhere, yes.

13 MR. LEWIS: Thank you very much.

14 MR. WATKINS: No further questions.

15 Thank the witness.

16 STEVE GREENE

17 being duly sworn according to law, on his oath,

18 testified as follows:

19 DIRECT EXAMINATION BY MR. MORROW:

20 Q. Good afternoon, Steve.

21 A. Hi.

22 Q. Would you please introduce yourself?

2852

1 A. Steve Greene.

2 Q. And Steve, where are you employed?

3 A. Ohio Bureau of Criminal Identification and
4 Investigation.

5 Q. And how long have you been employed there?

6 A. Almost 25 years.

7 Q. And in what capacity are you employed with

8 BCI?

9 A. For the past 23 years, I have been employed in
10 the laboratory as a document examiner.

11 Q. And when you talk about document examiner,
12 what does that entail?

13 A. We make examinations and comparisons of
14 anything that contains written
15 communication. This includes the
16 comparison of handwriting, hand printing,
17 and examination of documents for
18 alterations, obliterations, examination
19 of documents for any indented writing and
20 at one time, we looked at documents
21 compared with various types of office
22 equipment, desk top publishing -- we see

2853

1 very little of that anymore.

2 Q. And can you detail a little bit about your
3 education and training background for us,
4 please?

5 A. Yes, Sir. I have approximately three years of
6 college. The training as a document
7 examiner was an apprenticeship. I
8 studied with Walter Knight for two years,
9 and continued to work with him for the
10 following ten years. In addition to
11 that, I have had two weeks school with
12 the Secret Service and two weeks school
13 with FBI and attended various other
14 training classes for the past 20 years.

15 Q. Do you obtain any certification or degrees or
16 recognition to be a document examiner?

17 A. No, Sir.

18 Q. You had a rather lengthy apprenticeship?

19 A. Yes, Sir.

20 Q. At some point in time, does the master tell
21 you, you are no longer an apprentice?

22 A. Yes.

2854

1 Q. And he cuts you loose to do your own?

2 A. Yes.

3 Q. And that did happen, ultimately, from
4 Mr. Knight?

5 A. That is correct.

6 Q. And have you ever had anyone work under you to
7 be an apprentice?

8 A. Yes, Sir.

9 Q. How many people have you trained as
10 apprentices?

11 A. Only one.

12 Q. And how long ago was that?

13 A. About ten years ago.

14 Q. And document analysis also include handwriting
15 identification or handwriting analysis?

16 A. Yes, Sir.

17 Q. And what makes that type of analysis possible?

18 A. Each of us have our own individual unique

19 style of writing, even though we're

20 taught to write the same way, we deviate

21 from that style of writing we're taught

22 in school and create individual

2855

1 characteristics within our own writing,
2 and with that, those individual
3 characteristics can be compared with
4 other documents to make a determination
5 of whether or not an individual may or
6 may not have written something in
7 particular.

8 Q. And what types of tools do you employ in order
9 to make a comparison of handwriting
10 analysis?

11 A. Most of it is visual, but we also use a
12 magnifier and stereo microscope.

13 Q. And in particular, did you have occasion to
14 conduct an investigation with respect to
15 a homicide involving an individual by the
16 name of Robert Fingerhut? More
17 importantly, did you have the opportunity
18 to undertake handwriting analysis of an
19 individual known as Nathaniel E. Jackson?

20 A. Yes, Sir, I did.

21 Q. Don't remember what case it was in relation
22 to?

2856

1 A. No, Sir, I'm sorry.

2 Q. I'm going to hand you what is marked as
3 State's Exhibit 281. Could you please
4 tell me if you recognize that, please?

5 A. Yes, Sir.

6 Q. Could you detail to the ladies and gentlemen
7 what that is?

8 A. This is a copy of the laboratory submission
9 sheet, which was prepared referencing the
10 documentary evidence that was submitted
11 in this case.

12 Q. In particular, what items were submitted to
13 you?

14 A. Items D-1 through D-5, item D-1, handwriting
15 standard from Nathaniel E. Jackson, dated
16 4-29-02, handwritten letter from
17 Nathaniel E. Jackson to Donna Marie
18 Roberts, dated 10-29-01, a handwritten
19 letter from Nathaniel E. Jackson to Donna
20 Marie Roberts, dated 10-26-01, seven
21 handwritten pages of documents from
22 Nathaniel Jackson's printing and

2857

1 signature, from CCA, and item D-5, four
2 pages of documentation written by
3 Nathaniel E. Jackson from Lorain
4 Correctional Institute.

5 Q. I'm going to hand you what is marked as
6 State's Exhibit 275-A and B, are you able
7 to identify those?

8 A. Yes, Sir, I am.

9 Q. And how are you able to identify those?

10 A. It bears the case identifier and my initials
11 on the seal.

12 Q. And please tell the ladies and gentlemen, what
13 those are.

14 A. Item D-2 is a handwritten letter from
15 Nathaniel E. Jackson to Donna Marie
16 Roberts, dated 10-29-01. And item D-3 is
17 a handwritten letter from Nathaniel E.
18 Jackson to Donna Marie Roberts, dated
19 10-26-01.

20 Q. And those are the D-2 and D-3, those are your
21 numbers?

22 A. That is correct.

2858

1 Q. And D-3, your number is actually State's

2 Exhibit 275-B?

3 A. Yes.

4 Q. And D-2 is State's Exhibit 275-A?

5 A. That is correct.

6 Q. I am also going to hand you what has been

7 marked as State's Exhibit 276-A, B and C.

8 Q. Could you please take a look at those and

9 tell me if you are able to identify them?

10 A. Yes, Sir.

11 Q. And how are you able to identify those?

12 A. In the same fashion. These three also have

13 the case identifiers, and my initials are

14 on the seal.

15 Q. And in particular, those are the other three

16 submissions contained on the submission

17 sheet to you?

18 A. Yes, Sir.

19 Q. Also, in your capacity with BCI, have you had

20 an occasion to testify in Court before?

21 A. Yes, Sir.

22 Q. And approximately how many times have you

2859

1 testified in Court?

2 A. 250. I have to have

3 Q. Of those times that you have testified, have
4 you testified as a handwriting expert or
5 a documents expert?

6 A. Yes, Sir.

7 Q. How many times approximately, have you
8 testified with respect to handwriting
9 analysis?

10 A. The vast majority of those times.

11 Q. And have you been qualified as an expert to
12 give opinions with respect to handwriting
13 analysis in the State of Ohio?

14 A. Yes, Sir.

15 Q. And have you been qualified as an expert in
16 Trumbull County to give opinions as to
17 handwriting analysis?

18 A. Yes, Sir.

19 Q. And do you recall the last time you were in
20 Trumbull County?

21 A. No, Sir, I don't.

22 Q. Quite sometime ago?

2860

1 A. Yes, Sir.

2 Q. At this time, the State would move to have
3 this witness qualified as an expert in
4 handwriting analysis.

5 THE COURT: Any objection?

6 MR. CONSOLDANE: Yes.

7 THE COURT: What is your objection?

8 MR. LEWIS: Cross examination hasn't
9 taken place, Judge. We don't do it this way.

10 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
11 HEARING)

12 Q. Let's do this, with respect to this case, did
13 you prepare a written report in this
14 matter?

15 A. Yes, Sir, I did.

16 Q. And I'm going to hand you what has been marked
17 as State's Exhibit 285. Can you identify
18 that, please?

19 A. Yes, Sir, this is the report prepared in
20 reference to this particular case.

21 Q. And that is a true and accurate copy of the
22 report prepared by you?

2861

1 A. It may be the original, but it is a true and
2 accurate document.

3 Q. If you could, please detail to the ladies and
4 gentlemen what you did in preparing that
5 report and how you came about your
6 conclusions.

7 A. In the preparation of the report, followed the
8 comparison of the handwriting samples to
9 the questioned documents, and in this
10 particular case, item D-1, D-4 and D-5,
11 were all submitted as bearing known
12 handwriting of Nathaniel Jackson. Those
13 known handwritings were then compared
14 with questioned documents, which in my
15 report, or item D-2 and D-3, side by side
16 compare some of the known writing where
17 the questioned writing was made in an
18 attempt to first look for individual
19 characteristics contained in the
20 questioned and then compare those
21 individual characteristics to what may be
22 in the known handwriting samples. After

2862

1 having made those comparisons, I arrived
2 at an opinion.

3 THE COURT: Just a moment. We have
4 an outstanding objection before we proceed. Put on
5 the record that the objection is overruled. I
6 think this gentleman is qualified to testify as an
7 expert. He's testified many times.

8 Q: And in particular, I guess, for the long and
9 short of it, you get something that
10 someone says this is written by an
11 individual?

12 A. Yes, Sir.

13 Q: Then you have another document which you don't
14 know whether or not it was written by
15 that same person?

16 A. That is correct.

17 Q. You put the two side by side and you compare
18 them to see if they have similar traits
19 and characteristics?

20 A. That is correct.

21 Q. And what types of things are you looking at in
22 making that determination?

2863

1 A. We look for deviations from classic copy book
2 bearing the style of writing, the size of the
3 writing, the size relationship within the
4 writing, the slant of the writing, the
5 actual make-up of the letters themselves.
6 All of those things go into an
7 individual's writing and could come into
8 play to help you make an identification
9 or elimination.

10 Q. And that was what was done in this case?

11 A. Yes, Sir.

12 Q. If you would, at this time, I would like to
13 display the handwriting standards versus
14 the handwriting unknowns for comparison
15 purposes.

16 THE COURT: Yes.

17 Q. First thing I'm going to put on the screen
18 what is identified as State's Exhibit
19 276-A. Would you please tell the Jury
20 what is in that document, please, or what
21 is in that envelope?

22 A. State's Exhibit 276-A contains my item D-1, an

1 envelope and a sheet of paper, both

2 submitted as bearing the known

3 handwriting of Nathaniel Jackson.

4 Q. And this was an item you received from who, if
5 you know?

6 A. I would have to refer back to the submission
7 sheet. These documents were submitted by
8 the Howland Police Department, Detective
9 Paul Monroe.

10 Q. What was the date of the submission and the
11 date of your analysis?

12 A. The date of submission was 5-6-02. The date
13 of my analysis was 5-29-02.

14 Q. And this was the one document that you
15 understood to be belonging to the
16 Defendant, the handwriting sampler from
17 Nathaniel Jackson?

18 A. There are actually two documents, a letter and
19 a copy of a letter and envelope.

20 Q. I'm going to show you what is marked as 276-B.
21 Can you look at that, please, and explain
22 to the ladies and gentlemen what is in

2865

1 there?

2 A. Item 276-B is my item D-4, and these are seven
3 documents which were submitted which
4 contained the known handwriting of
5 Nathaniel Jackson.

6 Q. And any documents in particular from that,
7 that you utilized in making your
8 comparison?

9 A. All of the documents were used, but none of
10 these in particular were ones that we're
11 going to use for demonstration purposes.

12 Q. I'll hand you 276-C. Take a look at that,
13 please, and explain to the ladies and
14 gentlemen what that document consists of.

15 A. Item 276-C is my item D-5, and these were
16 documents submitted as bearing the known
17 handwriting and hand printing of
18 Nathaniel Jackson, from Lorain
19 Correctional institution.

20 Q. Were there any documents in that in particular
21 that you utilized in making your
22 comparison or that were used for

2866

1 demonstration and comparison?

2 A. Yes, Sir, the employment history.

3 Q. And we'll mark that as 276-C-1.

4 A. Yes, Sir.

5 Q. I'm going to hand you what has been marked as
6 275-B. Take a look at that, please.

7 A. Yes, Sir.

8 Q. And briefly explain to the ladies and
9 gentlemen what that is.

10 A. It is an envelope containing a letter which
11 was submitted as a questioned document.

12 Q. And is that letter compared against the items
13 of 276-C-1 and the 276-B -- I'm sorry,
14 276-A, the handwriting standard?

15 A. Yes, Sir.

16 Q. And there are certain portions of that letter
17 that you were able to look at, to be able
18 to allow you to make your comparisons?

19 A. The entire letters were looked at in
20 comparison to the known sample.

21 Q. And how many pages is this document, contained
22 inside?

2867

1 A. Nine white pages and one yellow page.

2 Q. On 275-A?

3 A. It also is an envelope containing the letter.

4 The letter is five pages in length, all
5 of them on white paper.

6 Q. And at this time, what I would like to do, is

7 I would like to put the Exhibit from

8 275-B -- I'm sorry, 275-A -- 275-A on the

9 screen, and have you identify how you are

10 able to make your comparison. First,

11 we'll put the first page. Explain to us

12 how you were able to make your

13 comparisons with the other document.

14 First of all, let me show you the

15 standards. Tell me what types of things

16 you are looking for from the standard.

17 A. On the standard, the type of characteristics

18 that were noted were -- you will notice

19 the size and relationship between the 0

20 and the 7 and 2705 in the address, and

21 also the length of the upper portion of

22 the 7 in comparison to the surrounding

2868

1 letters. The lower case S have a
2 somewhat left hand slant to them. They
3 are back end slant, and the majority of
4 the other letters are fore hand slant.
5 The use of an upper case N throughout
6 printing, there are no lower case N's
7 present. The very small lower case I in
8 explain the relation to the surrounding letters --
9 the strokes on these two Y's drop
10 straight down, an example of another type
11 of Y in some of the other documents. The
12 T H combinations with an upper case T and
13 lower case H, with the cross bar going
14 over the top of the H. The use of a
15 cursive or Greek style E in the printing,
16 and it also has a back hand or left hand
17 slant. Those are the types of things
18 that were looked at in comparison with
19 the questioned document.

20 Q. Now in reference to your D-2. D-2, I'm going
21 to direct your attention to, down to this
22 area here where I have got, direct your

2869

1 attention down here where my finger is
2 where it begins, "inasfar as the Robert
3 problem." Do you see similarities there
4 that would allow you to arrive at a
5 conclusion as to who penned that second
6 letter?

7 A. Yes, Sir.

8 Q. And if you could, explain to the jurors what
9 those similarities are and how you were
10 able to arrive at those conclusions?

11 A. The individual characteristics are the
12 characteristics known in the known
13 writing were also looked for in the
14 questioned writing. Again, we have the
15 lower case F with a back hand slant. We
16 have the T-H combination of that, the
17 very small I in will. The very straight
18 lower extension on the U. The use of the
19 Greek E in because with a back hand
20 slant.

21 Q. And that Greek E was something in other
22 documents as well?

2870

1 A. Yes, other known standards. Again, we have
2 comparison between the printing and the
3 known as well as the printing in the
4 questioned.

5 Q. And were there anything in terms of the R's
6 and P's that you recognized, the R's, the
7 capital R's and the capital P's that you
8 recognized throughout the known standard?

9 A. All of the letters were comparable, but yes,
10 Sir, the P's, some of the P's. You
11 notice the R and P, the upper recurving
12 stroke does not connect to the staff of
13 the letter. Again that would be
14 something individual to the writer.

15 Q. And that is contained on the first page of
16 that document as well as other pages as
17 well?

18 A. Yes, Sir, these were consistent throughout the
19 letters.

20 Q. If I direct your attention down to where it
21 indicates, where it begins, "This is how
22 you believe that I love you 100 percent"

2871

1 you see the same characteristics there,
2 in the capital T H as well?

3 A. We have the T H combination. We have the use
4 of the Greek E's with the back hand
5 slant. We have the use of the upper case
6 N throughout the printing itself. The
7 straight extension of the Y, all of these
8 things are consistent throughout the
9 letters.

10 Q. Did you also notice something unique about his
11 double T's?

12 A. Yes, Sir, when you have double T combination,
13 the cross stroke, it is not a single
14 cross stroke, each of the T's are crossed
15 individually and that combination was
16 found on the employment history form as
17 well as in the questioned documents
18 themselves.

19 Q. If I direct your attention to this area here,
20 is that the double T stroke that you are
21 talking about?

22 A. Yes, Sir.

2872

1 Q. And that is what made that stand out
2 as characteristically in this particular
3 letter?

4 A. Yes, Sir. In conjunction with all of the
5 other characteristics.

6 Q. You also made some comparisons on that other
7 letter which is the D-3 submission, is
8 that correct?

9 A. Yes, Sir.

10 Q. The first letter that I handed to you, what
11 was the date that that letter was
12 written, if you know?

13 A. October 29, 2001.

14 Q. Is that the date that that letter is dated?

15 A. Yes, Sir, it is.

16 Q. And in D-3 submission, can you tell me the
17 date that that was dated?

18 A. D-3 was dated October 26, 2001.

19 Q. And if we take the D-3 submission and compare
20 it with the D-1 submission, first of all,
21 do we have some of the similar language
22 in the two documents?

2873

1 A. The language was a part of the comparison the
2 characteristics themselves were.

3 Q. Is it a practice to try to obtain the same,
4 have someone provide the same sample from
5 the one you are comparing against?

6 A. Yes.

7 Q. Is that beneficial?

8 A. Yes.

9 Q. So if you get an unknown, and a person writes
10 that unknown and you get a standard, you
11 can compare it against that?

12 A. Yes, Sir, it provides a side by side
13 comparison.

14 Q. And in particular, with the D-1 submission and
15 the D-3 submission, does it appear that
16 those were of the same language?

17 A. Yes, Sir. It starts out the same language.

18 Q. And if we look at the second to the last page,
19 directing your attention to under the
20 fold of the letter where it begins right
21 here it says, "Hey, Donna," are you able
22 to make some comparison and

2874

1 identifications from that as well?

2 A. Yes, Sir, again the same characteristics

3 occurred throughout the letters. We look

4 over here to the margin, we have the T H

5 combination of the very small lower case

6 I and the upper case formation of the N.

7 The use of the Greek E, that is also of

8 the back hand formation and the word

9 "funeral," you have the lower case F, it

10 is also back hand. We have another T H

11 combination, the same types of formation

12 that are consistent throughout all of the

13 questioned documents as well as the known

14 items.

15 Q. And finally, turning to the second page of the

16 document, were you able to make

17 comparisons on the top as well?

18 A. Yes, Sir. We have the T H combination, the

19 lower case F, and back hand slant, the

20 use of the upper case N, the Greek E with

21 the back hand slant. These double T's

22 are not beside each other. It is not

2875

1 double T crossing except that you will
2 notice that the cross stroke and staff
3 are disjointed, which is also found in
4 known handwriting. The similarities
5 previously noted and there are other
6 similarities.

7 Q. And these were -- each of these, both of those
8 two letters based upon your analysis,
9 your analysis, are from the same
10 individual as the known standard?

11 A. Yes, Sir, that would be my opinion.

12 MR. MORROW: I have no further
13 questions at this time.

14 CROSS EXAMINATION BY MR. LEWIS:

15 Q. Mr. Greene, you have been with the BCI&I -- it
16 was only one I before?

17 A. Well it has been BCI&I since I was there. At
18 one time, it was only one I.

19 Q. How many years have you been with them?

20 A. 25 years.

21 Q. And to become an expert in handwriting
22 analysis, do that one more time for me,

2876

1 you worked under somebody else?

2 A. Yes, Sir.

3 Q. Is there a handwriting school? In other
4 words, they send people like the FBI or
5 handwriting analysis, or some
6 professional entity that trains people on
7 a standard. Is there some standard out
8 there or something or what?

9 A. No, Sir. There's not one school that will
10 train document examiners.

11 Q. So there isn't anything organized in the sense
12 that you know, like we have these
13 fingerprint comparisons, and normally, we
14 forgot to ask the gal when she was there,
15 but normally an FBI will have a standard.
16 They need nine points of comparison or we
17 need five points of comparison or
18 something like that, there's no national
19 standard?

20 A. In documents?

21 Q. Yes.

22 A. In documents, there's not a number associated

2877

1 with the standard, it is similarities

2 with no unexplainable differences.

3 Q. It is kind of like the Wills -- they got into

4 a fight about Wills, are they

5 authenticate? Are they written by

6 somebody else? Who was the famous one,

7 they had the Will contest and handwriting

8 experts? Was it really written or phony

9 or whatever?

10 A. Yes, Sir.

11 Q. You get involved in those?

12 A. Civil work?

13 Q. Yes, actually, you can have a Will involved in

14 a murder case, if it is a phony Will, it

15 would be nice to write yourself in as the

16 beneficiary, write the person?

17 A. I suppose holographic document, whether it be

18 a Will or something like these letters.

19 Q. Those were the only letters that they

20 submitted to you?

21 A. That is correct.

22 Q. In regard for analysis?

2878

1 A. Yes, Sir.

2 Q. And since there really -- there isn't a

3 standard then when you are saying, we got

4 the two T's, the two double T's, will

5 normally cross the center line, you are

6 looking for something distinctive and you

7 see the separate T's, you are looking for

8 individual letters of some distinction,

9 right? Is that what you are doing there?

10 A. Yes, Sir.

11 Q. And if you see those repeated or whatever,

12 your assumption is that they wrote the

13 document. The two compare favorably?

14 A. Yes, Sir.

15 Q. And of course, all of the folks that go home

16 here today along with yourself -- you

17 work for the Attorney General, right?

18 A. Yes, Sir.

19 Q. The Attorney General actually is the law

20 enforcement officer for the State of

21 Ohio, right?

22 A. I'm not sure of that. I heard her referred to

2879

1 as that, but it becomes a point of law

2 Q. And I'm not really sure.

3 Q. But, normally, in the normal course of things

4 as all of the other people from BCI&I,

5 you get the documentation and everything

6 from either the police or the Prosecutor,

7 is that right?

8 A. Yes, Sir.

9 Q. And make a comparison. Did you do any other

10 analysis in regard to Donna Roberts?

11 A. No, Sir.

12 Q. You didn't do any comparison of writings for

13 Donna Roberts?

14 A. No, Sir.

15 Q. Nothing was submitted to you whatsoever, any

16 standards for Donna Roberts?

17 A. No, Sir.

18 Q. Does anybody else examine the documents for

19 BCI&I?

20 A. There's one other examiner.

21 Q. Who is that?

22 A. David Hall.

2880

1 MR. LEWIS: Thank you.

2 MR. MORROW: No redirect.

3 THE COURT: Do you have one more
4 witness?

5 MR. WATKINS: We don't have any more
6 today.

7 THE COURT: That completes the
8 testimony for today then, ladies and gentlemen.
9 Again, I remind you, you are not to watch any T.V.,
10 read anything in the newspaper or have any
11 discussion about anything.

12 JUROR: Thursday is it going to be
13 the same way it was?

14 THE COURT: Yes, Thursday morning,
15 we'll start at 1:00. You will not be here in the
16 morning. Have a nice evening. You are not to
17 discuss anything or form any opinions.

18 (Court in Recess at 4:10 p.m.)

19

20

21

22 Wednesday, October 30, 2002:

2881

1 In open Court at 9:35 A.M.:

2 THE COURT: There was a question put
3 to the Jury Commissioner about if a juror,
4 concerning any questions that jurors might have
5 during the course of the trial. Historically it
6 has been discouraged to have questions from the
7 jurors, but if there's something that someone has,
8 that is, that they consider to be important enough,
9 you should write your question down on a piece of
10 paper and sometime during the day, give it to Mary
11 Ann. If it is possible or proper for that question
12 to be answered, I'll do so in some manner. Many
13 times, it would not be proper for me to do so, and
14 I would just ignore it. Is the State ready to
15 proceed?

16 MR. MORROW: We are. Call Chris
17 Ellington.

18 CHRIS ELLINGTON
19 being duly sworn according to law, on his oath,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. MORROW:

22 Q. Good morning. Can you tell us your name,

2882

1 Q. Please?

2 A. Chris Ellington.

3 Q. And Chris, are you employed?

4 A. Yes, I am.

5 Q. Where are you employed?

6 A. Final Cut Barber Shop.

7 Q. And where is the Final Cut located?

8 A. 402 East Market.

9 Q. Is that in the City of Warren?

10 A. Yes, it is.

11 Q. And how long have you been employed there?

12 A. Since November of last year.

13 Q. November of 2001?

14 A. Yes.

15 Q. And are you the owner of the place?

16 A. Yes, I am.

17 Q. And are there any other employees that work
18 there with you?

19 A. Yes.

20 Q. How many?

21 A. One.

22 Q. And what are your hours of operation?

2883

1 A. Nine to five, Tuesday through Friday, and
2 seven to four on Saturdays.

3 Q. Closed Sunday and Monday?

4 A. Yes.

5 Q. And I'm going to direct your attention back to
6 November of last year. Was that the same

7 hours you had back in November, December,
8 of last year?

9 A. Yes.

10 Q. You have had those hours since you have opened
11 the shop?

12 A. Yes.

13 Q. When you first opened your shop last year, was
14 any business besides yours in the same
15 building or next to you?

16 A. Yes.

17 Q. What business was that?

18 A. There was the bus station. There was the
19 ministry and a bakery.

20 Q. And was the bus station there in December of
21 last year?

22 A. Yes.

2884

1 Q. And do you know who operated that station?

2 A. I don't know their names.

3 Q. Was it a man or woman?

4 A. It was a man and a woman.

5 Q. And could you describe what the woman looked
6 like?

7 A. She was kind of Caucasian, short, like reddish

8 hair, reddish, auburn hair.

9 Q. Any idea approximate of her age?

10 A. Probably I would say around 50. I'm not sure.

11 Q. And the man who was there, can you describe
12 him?

13 A. Just gray hair. I only saw him in the car.

14 Q. And when you saw him in the car, what car did
15 you see him in?

16 A. It was a gray or silver Chrysler.

17 Q. Newer car, older car?

18 A. Newer.

19 Q. And what, being her, did you ever see her
20 driving a car?

21 A. Yes.

22 Q. What kind of car did you see her driving?

2885

1 A. Also a Chrysler, like a burgundy.

2 Q. Now I want to try to focus your attention in
3 or around December 10, 11, and 12, and
4 ask if you remember some incidents that
5 happened back then. Do you remember
6 hearing about the man being killed?

7 A. Yes.

8 Q. And do you remember when it was that you first
9 learned about him being killed?

10 A. On the news.

11 Q. It was on the news. Would that have been the
12 next day?

13 A. Yes.

14 Q. And as a result -- and then did you learn
15 about some people being arrested in
16 connection with his murder?

17 A. Yes.

18 Q. And approximately how much later in time was
19 that?

20 A. Maybe a week.

21 Q. And was there something about that arrest that
22 you had contacted the police or the

2886

1 police came and talked to you?

2 A. Yes, they came and talked to me.

3 Q. And when they talked to you, you gave them
4 some information about something that
5 stuck in your mind that you had
6 remembered from the day before the
7 murder?

8 A. Correct.

9 Q. And why don't you tell the ladies and
10 gentlemen what it was that you learned or
11 that you told the police about the day
12 before the murder? There's somebody that
13 came into your store?

14 A. Yes. The lady that worked at the bus station,
15 and she brought someone in there to have
16 their hair cut.

17 Q. And could you describe the person that she
18 brought in to have their hair cut?

19 A. Just a black male, afro.

20 Q. Could you give approximate age?

21 A. Maybe late twenties.

22 Q. And do you remember if he was heavy or thin?

2887

1 A. I think he was thin.

2 Q. Do you know if he was tall or short?

3 A. Probably around my height.

4 Q. How tall are you?

5 A. Five foot six.

6 Q. That was in December, right?

7 A. Yes.

8 Q. And again, you were closed on Monday?

9 A. Yes.

10 Q. And if we found out that Mr. Fingerhut, the
11 guy next door, died on a Wednesday, this
12 would have been a Tuesday that they were
13 in your store?

14 A. Yes.

15 Q. Do you remember about what time of day they
16 came in?

17 A. No, I don't.

18 Q. Had you ever seen that man either before or
19 after that time?

20 A. No.

21 Q. Do you remember seeing anything strange with
22 his hands?

2888

1 A. No.

2 Q. He didn't have any bandages on his fingers
3 that you remember?

4 A. Not that I remember.

5 Q. And after this individual finished getting his
6 hair cut, what happened?

7 A. He left.

8 Q. Could you recognize him today if you saw him?

9 A. I only saw him that one time.

10 Q. Do you see anybody in the Courtroom that looks
11 like him?

12 A. Yes.

13 Q. Could you tell us where he's seated?

14 A. Over there next to the two gentlemen in the
15 suits.

16 MR. MORROW: May the record reflect
17 she's identified the Defendant.

18 THE COURT: The record will so
19 reflect.

20 MR. MORROW: No further questions.

21 CROSS EXAMINATION BY MR. CONSOLDANE:

22 Q. Christine, how are you this morning?

2889

1 A. Good.

2 Q. My name is Tony Consoldane. I am representing
3 Nathaniel Jackson along with Jim Lewis.

4 A. Okay.

5 Q. Just got a couple of quick questions. What
6 caused you to remember this? Well, first
7 of all, I'm not quite sure. Did you call
8 the police or did the police call you?

9 A. They came by to see me.

10 Q. And they asked you if you knew Donna. What
11 did they ask you?

12 A. They just asked me if I knew the people at the
13 bus station.

14 Q. And they asked you, did you know the woman at
15 the bus station?

16 A. Yes.

17 Q. And did they ask you if she was with another
18 man besides your husband?

19 A. No, they asked if she had brought someone in.

20 Q. And you said you don't remember what time of
21 day it was?

22 A. No.

2890

1 Q. Do you know if it was morning or afternoon?

2 A. No.

3 Q. What time did you quit working that day?

4 A. We close at five.

5 Q. And you stayed there until five?

6 A. Yes.

7 Q. Could it have been later in the afternoon that
8 he was in?

9 A. I don't know, it could have been.

10 Q. It could have been in the afternoon?

11 A. Could have been, yes.

12 MR. CONSOLDANE: Thank you. Nothing
13 further.

14 THE COURT: Any redirect?

15 MR. MORROW: No. Thank you.

16 THE COURT: Thank you. You are
17 excused.

18 JIM McCOY

19 being duly sworn according to law, on his oath,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. MORROW:

22 Q. Good morning. Could you please tell the

2891

1 ladies and gentlemen your name?

2 A. Jim McCoy. pretty

3 Q. Are you employed anyplace?

4 A. Yes, I work for Greyhound out of Cleveland.

5 Q. How long have you worked for Greyhound?

6 A. 23 years.

7 Q. As a Greyhound bus driver, do you drive a

8 specific route for Greyhound?

9 A. Yes.

10 Q. What route do you drive?

11 A. Presently I drive from Cleveland to New York

12 City and from Cleveland to Washington,

13 D.C.

14 Q. I want to direct your attention back to

15 December of last year. Did you drive the

16 same route?

17 A. No.

18 Q. What routes did you drive last December?

19 A. I worked schedule from Cleveland to Pittsburgh

20 and Pittsburgh to Erie and back.

21 Q. And did those routes include stops at the

22 Youngstown and Warren bus terminal?

2892

1 A. Yes, it did.

2 Q. And I assume that you operate on a pretty
3 tight schedule?

4 A. Yes.

5 Q. How many stops during the day do you make at
6 the Warren terminal?

7 A. One, once a day.

8 Q. And what time is it that you make that stop at
9 the -- well, again back in December of
10 last year, what time did you make your
11 stop at the Warren terminal?

12 A. 5:15 P.M.

13 Q. And you also stopped at the Youngstown
14 terminal?

15 A. Yes.

16 Q. What time?

17 A. Scheduled in Youngstown at 4:35 and out at
18 4:45.

19 Q. And in turn I want to direct your attention to
20 December, the day of December 11, 2001.

21 Do you remember that day?

22 A. Yes.

2893

1 Q. And what is it that you remember, why is it
2 that you remember that day?

3 A. That is the day I came through Youngstown and
4 they were doing construction on the
5 parking lot, and I had to park my bus out
6 in front of the bus station but it was a
7 driver that came from Cleveland on his
8 way to New York and he pulled on to the
9 parking lot where they were doing the
10 construction and I walked back there to
11 talk to him, and asked him why did he
12 park back in and Mr. Fingerhut came back
13 and he told me that I could bring my bus
14 in there, also.

15 Q. Let me do this. You knew Mr. Robert
16 Fingerhut?

17 A. I seen him, yes, from time to time at the
18 Youngstown station.

19 Q. And to the best of your knowledge, what did he
20 do at the Youngstown station?

21 A. He was in charge of the Youngstown and Warren
22 station.

2894

1 Q. And what about Donna Roberts, are you familiar

2 with her?

3 A. Yes, she used to work at the Warren station.

4 Q. And if you had to describe Donna Roberts, how
5 would you describe her?

6 A. I really don't know how to really describe
7 her, because me and her didn't really hit
8 that comes it off when she started working there.

9 Q. Do you remember what color her hair was?

10 A. Brownish.

11 Q. Tall or short?

12 A. Short.

13 Q. Approximately any idea how old she would be?

14 A. I'm going to say 50's maybe.

15 Q. And as part of your route, you ended up going
16 to -- you were on your way back to
17 Cleveland in the evening?

18 A. Yes.

19 Q. And so your first stop was the Youngstown
20 terminal?

21 A. Yes.

22 Q. And you spoke with Mr. Fingerhut at the

2895

1 Youngstown terminal?

2 A. Yes. Normally, it is two people there, and
3 that day, there was only one, just him.

4 Q. He was the only one working the Youngstown
5 terminal?

6 A. Yes.

7 Q. When you say work, what does that include?

8 A. They have someone that comes out and works the
9 buses and the other person usually stays
10 in and sells tickets, and that particular
11 day, he was doing both.

12 Q. Would that include loading and unloading the
13 baggage?

14 A. Yes.

15 Q. When you were there, what time were you there?

16 A. 4:35.

17 Q. And he was the only one that you saw loading
18 and unloading your bus?

19 A. Yes. He never unloaded my bus. He unloaded
20 the other guy's bus.

21 Q. There was a second bus that was there, too?

22 A. Yes.

2896

1 Q. He was the only one that unloaded that bus as
2 doing if well?

3 A. Yes.

4 Q. What time did you park at the Youngstown bus
5 terminal?

6 A. 4:45.

7 Q. Where did you head to?

8 A. Warren.

9 Q. How long did it take you to get to Warren?

10 A. Approximately 30 minutes.

11 Q. And so you would have arrived at approximately
12 what time in Warren?

13 A. 5:15.

14 Q. When you got there, did you see anyone at the
15 station?

16 A. When I got there, we have to park on the side
17 and pick up passengers. Then we have to
18 walk around in front into the station and
19 ask, "Is there any passengers or
20 luggage," and when I walked in, I seen
21 Mrs. Fingerhut.

22 Q. Where was she at?

2897

1 A. Behind the counter.

2 Q. And what was she doing, if anything?

3 A. She was working on the computer, because I
4 asked her, I said, "What are you doing,"
5 and she said, "I'm trying to get the
6 computer shut down. I can't get the
7 computer shut down."

8 Q. And did you ask her anything else?

9 A. Yes, I said, "What are you doing in that chat
10 room." I said, "Are you in that chat
11 room talking to some men," and she said,
12 "no, I'm not in no chat room talking to
13 any men." And I said, "Who is the man
14 you are talking to?" She said, "I'm not
15 talking to a man." I said, "Come on,
16 tell me." She said his name is Nathaniel
17 and by that time a guy walked out the
18 back.

19 Q. And you say a guy walked out of the back.

20 Could you describe what he looked like?

21 A. A black man about five feet nine, maybe ten,
22 I'm not sure.

2898

1 Q. Was he heavy or thin?

2 A. Kind of thin.

3 Q. And is there anyone in the Courtroom that
4 appears to look like that individual that
5 you can see today?

6 A. No, I can't really say.

7 Q. But so this individual walked out of the back
8 behind the counter?

9 A. Yes.

10 Q. And did he say anything to you?

11 A. Well, I asked him, I said, "Are you
12 Nathaniel?" After she said his name was
13 Nathaniel, I said, "Are you Nathaniel?"
14 He said, "Yes, I am Nathaniel," like that
15 and I said, "You all are trying to get
16 out of here," and he said, "Yes, we're
17 trying to get out of here." I said, "I
18 won't hold you up, I'll get on out of
19 here. I'll leave."

20 Q. So to you, they appeared to be in a hurry to
21 leave the store?

22 A. Yes.

2899

1 Q. And that was at 5:15?

2 A. Yes.

3 Q. And you finished up and got out of there?

4 A. Yes, I walked out and walked back to the bus.

5 MR. MORROW: Nothing further.

6 CROSS EXAMINATION BY MR. LEWIS:

7 Q. Jim, my name is Jim Lewis and I represent

8 Nathaniel in this case. Do you really

9 know -- well, let me go back. You don't

10 recognize the individual that you saw at

11 the Warren bus terminal that day?

12 A. No, I don't.

13 Q. And your timing, you indicated that you came

14 to the Warren station, what time would

15 that have been?

16 A. 5:15 P.M.

17 Q. And I was trying to figure out the

18 construction, was construction being done

19 at the Youngstown or the Warren store?

20 A. Youngstown.

21 Q. So, you are at the Warren station at 5:15?

22 A. Yes.

2900

1 Q. And how long were you there?

2 A. Probably about five minutes at the most.

3 Q. Was anybody else at the Warren terminal?

4 A. You mean --

5 Q. Other than Donna Roberts and the man you
6 called Nathaniel?

7 A. Not inside the terminal, no.

8 Q. How about outside?

9 A. Outside, I picked up, I think it was two
10 passengers that day.

11 MR. LEWIS: No further questions.

12 Thank you.

13 THE COURT: Any redirect?

14 MR. MORROW: No.

15 JILL KENYON

16 being duly sworn according to law, on her oath,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. MORROW:

19 Q. Good morning, Jill. Could you tell us your
20 name, please?

21 A. Jill Kenyon.

22 Q. Are you working anyplace?

2901

1 A. I work at Red Lobster in Niles.

2 Q. How long have you worked at the Red Lobster?

3 A. Four years.

4 Q. Could you tell us where that is in Niles?

5 A. Right on the strip, right in front of the
6 Mall.

7 Q. And approximately how far is it from downtown

8 Berkeley on Dec. Warren?

9 A. About ten, 15 minutes.

10 Q. And how long have you been there?

11 A. Four years.

12 Q. And you have always been a waitress?

13 A. Yes.

14 Q. What shift do you typically work?

15 A. It varies, afternoons, day turn.

16 Q. No particular shift one way or the other?

17 A. No.

18 Q. And was there some point in time when some

19 police officers came and talked with you

20 about some customers that came to the Red

21 Lobster?

22 A. Yes.

2902

1 Q. And in particular, do you remember where those
2 officers were from?

3 A. Howland.

4 Q. And do you remember them asking you some
5 questions?

6 A. Yes.

7 Q. And you started to describe to them waiting on
8 a certain couple on December 11th, of
9 2001, do you remember that?

10 A. Yes.

11 Q. What did you tell them, if you remember?

12 A. Well ---

13 Q. You had these customers come in?

14 A. Yes. Nothing specific really.

15 Q. Can you describe the couple?

16 A. She had shoulder length red hair, he was
17 black.

18 Q. She was Caucasian?

19 A. Yes.

20 Q. Could you describe how old she was?

21 A. Mid-fifties.

22 Q. And do you remember how old he was?

2903

1 A. I think he was early 30's.

2 Q. And as part of the waitress, you take orders
3 from these people?

4 A. Yes.

5 Q. And when you take an order, do you enter into
6 a computer system?

7 A. Yes.

8 Q. And what happens when you enter that
9 information into the computer system?

10 A. The order will go straight to the kitchen, but
11 we can process and give a report of the
12 time of everything was done.

13 Q. There's a report that is kept by the
14 restaurant as to the customer orders?

15 A. Yes.

16 Q. And did this couple make any orders from you?

17 A. Yes.

18 Q. And do you remember what it was that they
19 ordered?

20 A. Yes, I do. One was a crab stuffed flounder
21 and one was king crab legs.

22 Q. Do you remember who ordered what?

2904

1 A. I do think the gentleman had the king crab
2 legs and she had the flounder.

3 Q. Does this order sheet show every time you take
4 an order?

5 A. Yes.

6 Q. Sometimes you will have a drink order, and you
7 might have appetizers and dinner and

8 they were dessert?

9 A. It will tell you everything that was ordered.

10 Q. I'll hand you what has been marked as State's
11 Exhibit 314 and inside the envelope
12 there's 314-A, 314-B and 314-C, 314-D and
13 314-E. I'll ask you to take a look at
14 those, please.

15 A. Okay.

16 Q. Are you able to recognize those?

17 A. Yes.

18 Q. Can you tell the ladies and gentlemen what
19 those are?

20 A. It's a print-out of exactly what time the
21 drinks were ordered because they ordered
22 drinks first and I ran the drinks in.

2905

1 Q. What time was that, if you know?

2 A. 1754.

3 Q. If 12:00 is 12 hundred hours, 1754 would be
4 5:54 P.M.?

5 A. I think that is right.

6 Q. But it is printed in military time?

7 A. Yes.

8 Q. So the first time they were -- they ordered
9 drinks?

10 A. Yes.

11 Q. Do you remember how long you were in the store
12 before you got to them?

13 A. Could have been maybe a minute.

14 Q. And then what happened after that?

15 A. After they ordered the drinks, they ordered
16 food. I put their food in.

17 Q. What time did they order their food?

18 A. I'm not sure which paper is which.

19 Q. They ordered a food order?

20 A. Yes.

21 Q. Did they order and then the food was taken out
22 to them?

2906

1 A. Yes.

2 Q. And did they then order anything else after
3 they ordered food?

4 A. No.

5 Q. And of course, after they were done, you
6 provided them with a bill?

7 A. Yes.

8 Q. I'm going to show you what has been marked as
9 State's Exhibit 315. Can you take a look
10 at that, please?

11 A. Yes, that's the receipt, the final guest
12 check.

13 Q. And was that final guest check given to them?

14 A. Yes.

15 Q. And is there a time that that final guest
16 check was printed?

17 A. Yes. 6:43 P.M.

18 Q. They were there for approximately an hour?

19 A. Yes.

20 Q. And this was the final guest check?

21 A. Yes.

22 Q. And that is printed with the time as to

2907

1 everything that is on there?

2 A. Yes. That's out of the number.

3 Q. And the police also asked you if you were able
4 to recognize the individuals, is that
5 correct?

6 A. Yes.

7 Q. They showed you a photographic line-up?

8 A. Yes.

9 Q. I'm going to hand you what has been marked as
10 State's Exhibit 316. Can you recognize
11 that?

12 A. Yes.

13 Q. Can you tell the ladies and gentlemen what
14 that is?

15 A. It is a line-up.

16 Q. Is that the line-up that was shown to you?

17 A. Yes.

18 Q. And is your signature on that?

19 A. Yes.

20 Q. And did you pick someone out of that line-up?

21 A. Yes.

22 Q. And which number did you pick out?

2908

1 A. Number six.

2 Q. And that person that you picked out is number
3 six, do you see him in the Courtroom
4 today?

5 A. Yes.

6 Q. And could you tell the ladies and gentlemen
7 where he's seated?

8 A. Over there. (Indicating)

9 Q. Is he in between the two?

10 A. Yes.

11 Q. Is that the same man that was at the
12 restaurant on the night of December 11?

13 A. Yes.

14 MR. MORROW: Can the record reflect
15 that she's identified the Defendant?

16 THE COURT: It will so reflect.

17 MR. MORROW: No further questions,
18 Sir.

19 CROSS EXAMINATION BY MR. CONSOLDANE:

20 Q. Jill, how are you today?

21 A. Good.

22 Q. My name is Tony Consoldane, and along with Mr.

2909

1 Lewis over there, we're representing
2 Nathaniel Jackson. Are you originally
3 from Warren?

4 A. Yes.

5 Q. Where did you go to school?

6 A. Mineral Ridge.

7 Q. And you graduated from Mineral Ridge High

8 School?

9 A. Yes.

10 Q. Did you go to any college?

11 A. No.

12 Q. And right after high school, you went to work
13 for Red Lobster?

14 A. Yes.

15 Q. And you have been there ever since?

16 A. I took a break, but yes, basically, I have
17 been there ever since.

18 Q. And you have a lot of people that come in
19 there?

20 A. Yes.

21 Q. About how many people do you wait on a night?

22 A. 30 or 40, sometimes less, sometimes more, but

2910

1 on the average, 30.

2 Q. Do you know what day it was that the police
3 came in and talked to you?

4 A. I do believe it was December 13.

5 Q. And did you know about the murder?

6 A. No.

7 Q. What made you remember these two people?

8 A. Nothing specific, once they showed me the food
9 order, I remembered them.

10 Q. Who showed you the food order?

11 A. My managers.

12 Q. And did the police talk with your manager
13 first?

14 A. Yes.

15 Q. And then the manager went and got the food
16 order and showed it to you?

17 A. Yes.

18 Q. How did these people pay for their food?

19 A. Cash.

20 Q. And do you know if they stayed around long
21 after they paid the bill?

22 A. No, they left right after.

2911

1 MR. CONSOLDANE: Thank you.

2 MR. MORROW: Nothing further. Thank
3 you.

4 JENNIFER ROBINSON

5 being duly sworn according to law, on her oath,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. MORROW:

8 Q. Good morning.

9 A. Good morning.

10 Q. Could you please tell us your name?

11 A. Jennifer Robinson.

12 Q. And Jennifer, how old are you?

13 A. 37.

14 Q. And are you employed anyplace?

15 A. Yes, I am.

16 Q. Where are you employed?

17 A. At the Days Inn Motel.

18 Q. And where is that located?

19 A. It is located on Market Street in Boardman, in
20 Youngstown, Ohio.

21 Q. And in relation to the Southern Park Mall, is
22 it south of the Southern Park Mall?

2912

1 A. Yes.

2 Q. Is it away from Youngstown?

3 A. It is away from Youngstown.

4 Q. And how long have you worked there?

5 A. About seven years.

6 Q. And what do you do at the Days Inn?

7 A. I am a housekeeper.

8 Q. And what are your duties as a housekeeper?

9 A. Once the clients check out, I go in and clean
10 the room.

11 Q. And you clean all of the rooms, or most of the
12 rooms at the hotel?

13 A. There's more than just one. We split them up.

14 Q. Now, was there a point in time when some
15 police officers from Howland Police
16 Department came and talked to you last
17 year?

18 A. Yes.

19 Q. And that would have been last December?

20 A. Yes.

21 Q. And do you remember what they came to talk to
22 you about?

2913

1 A. About one of the rooms, the people that stayed
2 in one of our rooms out there.

3 Q. Do you remember what room number that was?

4 A. Room 129.

5 Q. And do you remember the first day that you
6 were supposed to clean the room?

7 A. Yes, I do.

8 Q. What day would that have been?

9 A. That would have been on a Thursday.

10 Q. And if I told you that the Thursday would have
11 been December 13, would that bring your
12 recollection?

13 A. Yes.

14 Q. But you talked to the police close in time to
15 when you were supposed to clean the room
16 and when they came out and did it, would
17 that be fair to say?

18 A. Yes, it would.

19 Q. And so you were to clean the room on a
20 Thursday. Why didn't you clean it on
21 Wednesday?

22 A. I was off Wednesday.

2914

1 Q. Wednesday was your normal day off?

2 A. Yes.

3 Q. And so you were going to clean it for the
4 first time on Thursday?

5 A. Yes, I was.

6 Q. And did you clean the room on Thursday?

7 A. No, I did not.

8 Q. And why did you not clean the room?

9 A. It had a do not disturb sign on the door.

10 Q. Did you find anything out about that room, the
11 type of rental or the type of pay that
12 that room was?

13 A. Just that it was a stay over room.

14 Q. And when you stay over -- what is a stay over
15 mean?

16 A. When they come in, pay for the room for at
17 least two to three days, sometimes
18 longer.

19 Q. And when the room is a stay over, do you treat
20 it differently than a room that is not a
21 stay over?

22 A. Yes.

2915

1 Q. What's the difference?

2 A. Well, when you get in the room and clean it,
3 you just go in and do the bathroom and
4 the trash, then you leave the room.

5 Q. That is a stay over?

6 A. That is what you do in a stay over room. In
7 a regular check out, you strip everything
8 down and clean it that way.

9 Q. So, on Thursday, you didn't go in the room
10 though because they had a do not disturb
11 sign?

12 A. Right.

13 Q. Did you clean the room on Friday?

14 A. No, I did not.

15 Q. And why didn't you clean it on Friday?

16 A. The do not disturb sign was still on the door.

17 Q. And did you then clean it on Saturday?

18 A. Yes, I did.

19 Q. And when you went into the room, was the do
20 not disturb sign still on the door for
21 Saturday?

22 A. No, it was not.

2916

1 Q. Do you know if the people had checked out?

2 A. As far as I know, they did.

3 Q. So, you opened up the room and you went in?

4 A. Yes.

5 Q. And when you got in the room, what did you

6 see?

7 A. The room key was laying on the dresser, and I

8 went and walked into the bathroom. There

9 was really no personal items left in

10 there, so I called the front desk to ask

11 if they were check out or stay over to

12 see how I should clean the room.

13 Q. And at that point, how did you decide to clean

14 the room?

15 A. When they don't leave any personal items such

16 as deodorant, toothpaste, toothbrush,

17 then we go ahead and clean the room as a

18 check out.

19 Q. And as part of your cleaning process, when you

20 go to clean rooms, do you put anything on

21 your hands, do you wear gloves?

22 A. Occasionally, we wear gloves.

2917

1 Q. And do you recall if you were wearing gloves

2 the dress on this day?

3 A. No, I don't believe I was.

4 Q. And then did you start to clean the room?

5 A. Yes, I did.

6 MR. MORROW: May we approach?

7 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT

8 OF HEARING)

9 THE COURT: Waive anything on the

10 record on Side Bar?

11 MR. LEWIS: Yes.

12 MR. MORROW: Yes.

13 Q. When you started to clean the room, there were

14 certain items that you cleaned up in the

15 room, correct?

16 A. Yes.

17 Q. And in particular, you started looking through

18 the different drawers and dressers at the

19 room?

20 A. Yes.

21 Q. And did you find any kind of clothing in the

22 room?

2918

1 A. No clothing.

2 Q. And you opened up the dresser drawers to clean
3 them out?

4 A. Yes.

5 Q. And if you opened up the dresser drawers, did
6 you find any kinds of boxes or materials
7 and what were in them?

8 A. Yes. There was a bottle of peroxide in one of
9 the dresser drawers.

10 Q. Did you also find an empty bandage box?

11 A. Yes. Empty bandage box and some used ones in
12 the room.

13 Q. Did you also find some gauze?

14 A. Yes.

15 Q. And what did you do with those items?

16 A. Put everything in a small bathroom garbage can
17 and then I took and put it in another
18 plastic bag, and then I put it in the
19 garbage bag that is on my cart.

20 Q. And what happened with that bag after you
21 collected it all up?

22 A. At the end of the day, I take it and tied it

2919

1 up and throw it in our dumpster.

2 Q. Did you see anything become of that bag that
3 you threw in the dumpster after that day?

4 A. Yes. Two detectives came out and one of them
5 was asking me about it, and he went in
6 the dumpster and got the bag out and
7 opened it up and went through it, and
8 asked me if I recognized any of the stuff
9 in there.

10 Q. And that was the peroxide. I am going to show
11 you what has been marked as State's
12 Exhibit 197. Does that look like the
13 garbage you collected from the room and
14 put in the bag?

15 A. Yes.

16 Q. And that was the bag that the officers then
17 collected from the dumpster?

18 A. Yes.

19 Q. Did you notice any kind of substance or
20 material on those bandages?

21 A. Some of them had blood on the gauze and stuff
22 that I threw away.

2920

1 Q. Did you see anybody other than the police
2 officers in the room?

3 A. No, I did not.

4 MR. MORROW: No further questions.

5 CROSS EXAMINATION BY MR. LEWIS:

6 Q. Jennifer, when you went into that room did you
7 see any signs of blood or what you
8 thought might be blood, any spots or
9 anything?

10 A. Not that I recall, no.

11 Q. Do you recall seeing who the occupants were or
12 occupant of the room?

13 A. No.

14 Q. Didn't see anybody?

15 A. No, I did not.

16 MR. LEWIS: Thank you.

17 THE COURT: You are excused. Thank
18 you. Let's take a 15 minute break. You are not to
19 discuss anything or form any opinion.

20 (Court in Recess at 10:15 A.M.)

21 (Resumed in Open Court at 10:50 A.M.)

22

2921

1 KATHY KIHM

2 being duly sworn according to law, on her oath,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. MORROW:

5 Q. Good morning. Could you please tell your name
6 to the ladies and gentlemen?

7 A. Kathy Kihm.

8 Q. And Kathy, where do you work?

9 A. Community Corrections Association.

10 Q. And where is Community Corrections Association
11 located?

12 A. Market Street in Youngstown, Ohio.

13 Q. How long have you worked there?

14 A. About 13 years.

15 Q. And what do you do there?

16 A. Executive secretary.

17 Q. And as executive secretary, are you also
18 responsible for keeping track of the
19 records that are made at Community
20 Corrections?

21 A. Yes.

22 Q. And are there records that are made with

2922

1 in respect to individuals that are staying
2 at Community Corrections Association?

3 A. Yes.

4 Q. Are those records kept in the regular course
5 of business?

6 A. Yes, they are.

7 Q. Are they made and kept close in time to the
8 events that happened?

9 A. Yes.

10 Q. I'm going to hand you what has been marked as
11 State's Exhibit 276-B. It contains seven
12 pieces of paper, numbered 276 B-1 through
13 276 B-7 and ask you to take a look at
14 those, please.

15 A. Okay.

16 Q. Are you able to identify those records?

17 A. I don't know exactly -- I know these came out
18 of Nathaniel's Jackson's case file. I
19 personally am not familiar with documents
20 because I don't deal directly with them.

21 Q. But you keep -- but other people prepare those
22 documents and they are kept in the

2923

1 regular course of the business at
2 Community Corrections?

3 A. Yes.

4 Q. And those were kept in Nathaniel E. Jackson's
5 file?

6 A. Yes, they were.

7 Q. Were you issued a subpoena to produce those
8 records?

9 A. Yes, I was.

10 Q. As a result of that subpoena, what did you do
11 with those seven documents?

12 A. I wasn't issued a subpoena to --

13 Q. You were issued a subpoena to produce those
14 before?

15 A. No.

16 Q. You were requested before to produce those
17 records?

18 A. Yes, yes, I was.

19 Q. Did you give those records to the Howland
20 Police Department?

21 A. Yes.

22 Q. Those are the original documents that you gave

2924

1 to the Howland Police Department?

2 A. ~~MOR~~ Yes, they are.

3 Q. Do you recall whom you gave them to?

4 A. I know one gentleman was a Sergeant. I don't

5 recall his name.

6 Q. But those are the same records that you gave

7 to him?

8 A. Yes, they are.

9 Q. ~~Use~~ And the individual is Nathaniel E. Jackson?

10 A. Yes.

11 MR. MORROW: Nothing further.

12 CROSS EXAMINATION BY MR. LEWIS:

13 Q. Kathy, my name is Jim Lewis, I represent

14 Nathaniel in this case along with

15 Mr. Consoldane. Can I see the Exhibits

16 there?

17 A. Yes.

18 MR. LEWIS: Thank you very much.

19 THE COURT: You may step down.

20 Thank you.

21 BRIDGET PAUL

22 being duly sworn according to law, on her oath,

2925

1 testified as follows:

2 DIRECT EXAMINATION BY MR. MORROW:

3 Q. Could you please introduce yourself?

4 A. I am Bridget Paul.

5 Q. And Bridget, where do you live?

6 A. [REDACTED]

7 Q. Where is [REDACTED] located?

8 A. In Howland.

9 Q. Where is that in relation to Fonderlac?

10 A. [REDACTED]

11 Q. And are you employed anyplace outside the
12 home?

13 A. No.

14 Q. And did you become familiar with a woman by
15 the name of Donna Roberts?

16 A. In passing, yes.

17 Q. And in particular, did you become familiar
18 with the kind of car that Donna Roberts
19 drives?

20 A. I could recognize it.

21 Q. If you could, just describe what the car kind
22 of looks like.

2926

1 A. Burgundy and a sports car, and in good
2 condition. Actually I'm not good at
3 brands of cars, but if I saw it, I would
4 know it.

5 Q. I'm going to hand you what has been marked
6 previously as State's Exhibits 246, 247,
7 248 and 249 and ask you to take a look at
8 those, please.

9 A. Okay.

10 Q. Are you able to recognize those?

11 A. Yes.

12 Q. And if you could, tell the ladies and
13 gentlemen what they are.

14 A. The last time you saw the car, this one, it
15 was the back end --

16 Q. Does that appear to be the red burgundy car
17 that Donna Roberts would be driving?

18 A. Yes.

19 Q. And those four pictures show four different
20 angles of the car?

21 A. Yes.

22 Q. And what was it in particular that you

2927

1 remember about that car now?

2 A. The bumper.

3 Q. And the back end?

4 A. Yes. It was very unusual because I was behind
5 it sitting and wanting it to go faster
6 and I realized that it was different. It
7 had the license plate and then you had
8 two orange reflecters on both sides.

9 Q. And the one picture there has the rear of the
10 car with those two orange reflecters?

11 A. Right.

12 Q. Now I am going to take you back to December
13 11, 2001. Do you remember seeing that
14 car that evening?

15 A. Yes.

16 Q. And why do you remember that date in
17 particular?

18 A. I was returning some tapes and I was behind
19 the car.

20 Q. And did you get some information the next day
21 that made you remember that day in
22 particular?

2928

1 A. A friend called and said there was a homicide
2 your brother in Howland, down the street and I kind
3 made a joke because I knew whose car I
4 was behind. I said I bet it is this
5 person here and it was.

6 Q. And as a result of that, did you then contact
7 the police and provide them with some
8 information?

9 A. Yes.

10 Q. And in particular, tell us when you first
11 remember seeing that car on Tuesday,
12 December 11?

13 A. It was about 9:30, between nine and ten and I
14 saw it on Old 82.

15 Q. And where is that in relation to your house?

16 A. I am a block, I am actually -- my house is in
17 between [REDACTED] and [REDACTED] and I was
18 taking [REDACTED], which is [REDACTED]
19 north of my house.

20 Q. And where were you planning on going?

21 A. To Giant Eagle.

22 Q. What were you going to do at Giant Eagle?

2929

1 A. Return tapes.

2 Q. You started to leave your house with the tapes
3 to go back to Giant Eagle?

4 A. Yes.

5 Q. Where did you first see -- you saw this car on
6 Old 82?

7 A. Yes. -- you go

8 Q. And which direction was that car going?

9 A. It was going towards Warren, which is west.

10 Q. And it was on Old 82 as well?

11 A. Yes.

12 Q. And as you head -- why don't you describe a
13 little bit about the area, Old 82, where
14 it is around your house, how many lanes
15 are on Old 82?

16 A. It is two lanes.

17 Q. One in each direction?

18 A. Yes.

19 Q. And as you continue, you said you were heading
20 west towards Warren?

21 A. Yes.

22 Q. And what is the first major crossroad that you

2930

1 would come to?

2 A. 46, it would be Howland Corners.

3 Q. And 46 is --

4 A. The first light you are saying.

5 Q. The first major intersection?

6 A. Okay, Route 46.

7 Q. And does that 46 take you down, if you go
8 south, it takes you towards Eastwood
9 Mall?

10 A. Yes.

11 Q. And that is the back way into the mall?

12 A. Yes.

13 Q. And what is right there on the corner of 46
14 and 82?

15 A. Giant Eagle.

16 Q. It is kind of a plaza?

17 A. A plaza, yes.

18 Q. And are there other stores besides Giant Eagle
19 that is there?

20 A. Yes.

21 Q. And how do you get into the Giant Eagle
22 parking lot? Are there a number of

2931

1 entrances to get into it?

2 A. It would be on your left as you are going down

3 towards Howland, you would make a left.

4 Q. And is Old 82 still two lanes at that point?

5 A. No. As soon as you cross through the light.

6 It goes into four lanes going towards

7 Warren.

8 Q. And you have seen the car that Donna Roberts

9 has driven before, is that correct?

10 A. Yes.

11 Q. And was there anything characteristic about

12 the driver, that the driver of the car

13 would do that caught your attention?

14 A. She would always when she smoked, she would

15 always put her hand out the window in a

16 certain manner and she would kind of

17 flick it like Hollywood style. We would

18 make fun of it whenever we would see it

19 and once I got in the light, I could see

20 the hand and then I realized it was her.

21 Q. So you followed this car from your allotment

22 down to 46?

2932

1 A. Yes.

2 Q. And approximately how far is that?

3 A. I'm not good at miles, maybe a mile.

4 Q. And you are directly behind this red car?

5 A. Yes.

6 Q. And did you have to stop at the light at 46?

7 A. Yes, we stopped. Actually we were just going

8 very slow, I think it just turned and we

9 went through, so I don't think it was a

10 red one, the one before that we stopped,

11 which would be on the Howland-Wilson

12 Road.

13 Q. And that light changed and you proceeded on

14 down to 46?

15 A. Yes.

16 Q. Do you know what the speed limit is out there?

17 A. I think it is 40.

18 Q. Do you know if you were doing the speed limit?

19 A. No.

20 Q. Did that appear odd to you?

21 A. Yes, because no one was on the road but us and

22 I was in a hurry and she was going very

2933

1 slow and it was agitating me, so that is
2 when I looked why I was right on her tail and I
3 couldn't miss her license, because it was
4 right there and it took forever to get
5 down to Howland Corners.

6 Q. And once you got to Howland Corners, what
7 happened then?

8 A. She stayed in the right lane to the next light
9 and then I went off into Giant Eagle, I
10 cut the light there and went into the
11 Plaza on the left.

12 Q. And what happened with her car?

13 A. As I was going up to Giant Eagle, there was
14 like across, I glanced back and I saw her
15 car still sitting there, and I was just
16 wondering what is she doing, because it
17 was taking her forever to get down the
18 road, and then she was pausing awhile and
19 I don't think it was a red light. Then I
20 went over and put my tape in the box and
21 I looked back and it looked like she was
22 moving. As I pulled up, I dropped the

2934

1 tape off, I glanced over, and the car was
2 there and then I looked back again and it
3 wasn't there.

4 Q. Did the length of time that she appeared to be
5 taking appear odd to you?

6 A. It seemed, but now as I think back at how she
7 used to drive, she used to drive slow all
8 the time. I don't know. If no one was
9 on the road, I always go fast and I
10 thought she would be going faster, but
11 she was going pretty slow.

12 Q. And this was approximately what time?

13 A. Between 9:30 and 10:00.

14 MR. MORROW: No further questions.

15 CROSS EXAMINATION BY MR. CONSOLDANE:

16 Q. My name is Tony Consoldane, and I represent
17 Nathaniel and I'm going to ask you a
18 couple of questions. How well do you
19 know Donna Roberts?

20 A. I don't.

21 Q. You have never met her?

22 A. No.

2935

1 Q. Have you ever seen her in the store shopping
2 or at any function?

3 A. I have seen her in passing, but I never
4 stopped to make a conversation with her.

5 Q. I guess the point I'm trying to make, have you
6 ever seen her outside of her automobile?

7 A. Yes.

8 Q. And where would that have been?

9 A. At the store, Giant Eagle, and actually most
10 of the time in the car.

11 Q. Did you ever see her drive any other car
12 besides this one?

13 A. No.

14 Q. And every time she would drive, she would have
15 her hand out with a cigarette in it?

16 A. Pretty much.

17 Q. Even in the Winter when it was cold?

18 A. Actually, that night, it was a nice night and,
19 yes, she had her window down and her hand
20 was out, because I saw her flick the
21 cigarette and I am thinking -- she was
22 that type of person.

2936

1 Q. You left your house on [REDACTED] and you came up
2 to Market Street or Old 82. Was she
3 already there at the stop sign or had she
4 already turned?

5 A. You know, I don't know. I didn't realize it
6 was her until --

7 Q. You got to Howland Wilson?

8 A. Yes.

9 Q. So you don't know when she was coming out of
10 that street?

11 A. I saw a light because the lighting is not good
12 in the allotment there and when I pull
13 out, there was a car, but I can't say if
14 it was her.

15 MR. CONSOLDANE: Thank you.

16 MR. MORROW: Nothing further.

17 THE COURT: Thank you.

18 KATHERINE THOMAS

19 being duly sworn according to law, on her oath,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. MORROW:

22 Q. Could you please tell us your name?

2937

1 A. Katherine Thomas.

2 Q. Where are you employed at?

3 A. I am self employed. I am an exclusive agent
4 for State Farm Insurance.

5 Q. How long have you been so employed there?

6 A. Since April 1, 1988.

7 Q. And do you work with any other employees in
8 that office?

9 A. Yes.

10 Q. What other kind of employees are there?

11 A. Currently, I have an office manager. That is
12 all I have at this particular moment.

13 I'm interviewing right now for additional
14 staff.

15 Q. And do you have any kinds of licenses or
16 certificates?

17 A. Yes, I do.

18 Q. Could you please tell the ladies and gentlemen
19 what kinds of licenses and certificates
20 you have?

21 A. I have a license by the State of Ohio in
22 casualty and life and health insurance

2938

1 and a series six license.

2 Q. What is a series six license?

3 A. That allows me to sell mutual funds.

4 Q. And how long have you been licensed --

5 A. And variable products.

6 Q. And how long have you been licensed as an

7 insurance agent?

8 A. Since 12-9-88.

9 Q. Have you been licensed in all of those lines

10 since 1988?

11 A. Variable products, to sell variable products,

12 I need a series six license and I

13 received that in 1998 because State Farm

14 didn't sell variable products before that

15 time.

16 Q. But you have done -- you have been a life

17 insurance agent, a property agent since

18 that time?

19 A. Yes, since 1988.

20 Q. In that capacity, are you familiar with

21 different insurance policies?

22 A. Yes.

2939

1 Q. And have you been trained in interpreting
2 different insurance policies?

3 A. Yes.

4 Q. And have you, did you have a client by the
5 name of Robert Fingerhut?

6 A. Yes.

7 Q. Do you recall when Robert Fingerhut became a
8 client of yours?

9 A. I can't tell you the specific date he became a
10 client, but I had him insured for several
11 years. He had been a State Farm client
12 for many, many years in Florida. He came
13 back here to this area, and he wanted to
14 get back with State Farm.

15 Q. And were you then assigned to become his agent
16 or did he contact you? How did that take
17 place?

18 A. He contacted me.

19 Q. And do you recall what kinds of insurance
20 Mr. Fingerhut had with State Farm?

21 A. I had several lines. I had his home, his
22 vehicles, his business insurance, rental

2940

1 property, and life insurance.

2 Q. And in particular, do you recall if you
3 insured any vehicles?

4 A. Yes.

5 Q. Do you remember what kinds of vehicles were
6 insured?

7 A. We had two Chryslers insured, a truck. I have
8 my file here. We had 2001 Chrysler. A
9 2000 Chrysler. They were the same type
10 of vehicle. A 1998 Ford Contour. A 1985
11 Pontiac Grand Prix.

12 Q. And the vehicle information that you have, as
13 part of your job as an agent, are you
14 required to determine who the owner of
15 those vehicles are?

16 A. At the time, we did not require that we
17 actually see the title. We just take the
18 information from the client.

19 Q. And did Mr. Fingerhut indicate to you who the
20 owners were of those vehicles?

21 MR. CONSOLDANE: Objection.

22 THE COURT: Again, I think it is

2941

1 objectionable unless there's some designation on
2 the policy signifying that.

3 Q. Did Mr. Fingerhut signify who the owners of
4 that vehicle were?

5 A. He instructed me to put them in Donna Roberts'
6 name.

7 Q. And is there something that is known as an
8 additional driver or covered driver on
9 the insurance parlance?

10 A. Yes.

11 Q. If you could, please explain to the ladies and
12 gentlemen what that means?

13 A. Any household we insure, we take the
14 underwriting information for all drivers
15 that have access to the vehicles, and
16 we'll insure the entire household, and we
17 did, even though she was the named
18 insured, he was underwritten to drive any
19 car in the household.

20 Q. So Mr. Fingerhut was able to drive, he was
21 insured under all of the cars that were
22 at that household?

2942

1 A. Yes.

2 Q. That would include both those Chryslers?

3 A. Yes.

4 Q. The 2000 and 2001?

5 A. Yes.

6 Q. Now, in addition, did you insure the
7 residence?

8 A. Yes.

9 Q. And actually first, who paid for the
10 automobile insurance?

11 A. The couple of times that I had interaction
12 with them, I was instructed by Robert to
13 get a check from Donna to pay for the
14 insurance.

15 Q. And did you then receive a check?

16 A. Yes.

17 Q. Do you remember who signed the check?

18 A. I can't be positive. I believe Donna, but I'm
19 not sure.

20 Q. But Robert had instructed you that Donna would
21 be bringing the check?

22 A. Right.

2943

1 Q. Now, with respect to the house, did you also
2 have insured the house?

3 A. Yes.

4 Q. Do you recall what the address was of the
5 house?

6 A. It is on Fonderlac. 254 Fonderlac, Southeast,
7 Warren, Ohio, 44484.

8 Q. And as part of that policy on the house, did
9 that also include insurance on contents
10 of the house?

11 A. Yes.

12 Q. And would that have included Mr. Fingerhut's
13 personal contents as well?

14 A. Yes.

15 Q. That would include his clothing, any personal
16 items that he would have at that house?

17 A. Yes.

18 Q. Did you also insure any businesses?

19 A. Yes.

20 Q. And what businesses did you insure?

21 A. His two Greyhound ticket offices, one in
22 Warren and one in downtown Youngstown.

2944

1 Q. And who was the owner to the best of your
2 understanding, based upon the insurance
3 policy?

4 A. That was also in Donna Roberts' name.

5 Q. And finally, did you maintain an insurance
6 policy on Mr. Fingerhut's life?

7 A. Yes, I did.

8 Q. I'm going to hand you what has been marked as
9 State's Exhibit 323 and ask you to take a
10 look at that, please?

11 A. Okay.

12 Q. Are you able to identify that?

13 A. Yes.

14 Q. And if you could just briefly tell the ladies
15 and gentlemen what that is.

16 A. That is a life policy that was issued by State
17 Farm for Robert Fingerhut.

18 Q. And is there an application page attached to
19 the page of that document?

20 A. Yes.

21 Q. And were you involved in preparing that?

22 A. Yes, I was.

2945

1 Q. Were you the actual agent that sold that
2 policy?

3 A. Yes.

4 Q. To whom did you sell that policy?

5 A. Robert Fingerhut.

6 Q. And do you recall when that policy was sold to
7 Mr. Fingerhut?

8 A. August 12, 1999.

9 Q. And life insurance policies carry a
10 designation as a beneficiary?

11 A. Yes.

12 Q. Could you tell the ladies and gentlemen what a
13 beneficiary is?

14 A. The beneficiary is the -- upon the insured's
15 death, that is the person who would
16 receive the proceedings from that policy.

17 Q. And does a policy typically make a designation
18 of a beneficiary?

19 A. Yes.

20 Q. And is there any requirement that the
21 beneficiary have any relationship to the
22 insured?

2946

1 A. No. You do not have to be related.

2 Q. And is there any requirement that such a
3 policy go to a spouse?

4 A. No, it doesn't necessarily have to go to the
5 spouse.

6 Q. Are you familiar with beneficiary payments in
7 the State of Ohio, how benefits are paid
8 out under a life insurance policy?

9 A. To the best of my knowledge, if it is a
10 contract between, in this case, State
11 Farm, the named insured and whoever they
12 designate as their beneficiary, that is
13 who it goes to.

14 Q. And if an individual is named as a
15 beneficiary, that is a spouse, and if
16 those people subsequently divorce and the
17 individual then dies, what happens to the
18 life insurance policy proceedings?

19 MR. LEWIS: I'm going to object.
20 That is not the situation here. We know they were
21 divorced in 1985. This policy was taken out in
22 1999. It doesn't apply.

2947

1 MR. MORROW: Just a hypothetical.

2 I'll reword it.

3 Q. Assuming that an individual comes in and takes
4 out a life insurance policy and names
5 another person to be his beneficiary or
6 her beneficiary, and designates that
7 person on the policy as a spouse, when in
8 this written fact the person is not his spouse, does
9 that affect the life insurance payments?

10 A. No.

11 Q. And in particular, in the policy that is
12 before you, did Mr. Robert Fingerhut
13 designate a beneficiary?

14 A. Yes, he did.

15 Q. And who did he designate as his beneficiary?

16 A. Donna Roberts.

17 Q. And do you know the face amount of the policy
18 that was on Mr. Fingerhut at the time of
19 his death?

20 A. 300,000.

21 MR. CONSOLDANE: Can we approach?

22 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF

2948

1 HEARING)

2 (At Side Bar with Reporter present.)

3 MR. CONSOLDANE: The State is
4 attempting to introduce two cards that say
5 insurance identification cards from State Farm. We
6 have never seen those before. We don't know where
7 they came from, and for them just to be able to
8 introduce them through this witness, I think it is
9 improper, plus it is a surprise on the Defense's
10 part.

11 MR. LEWIS: I saw those last night.
12 I think I saw those cards last night, not that they
13 were going to be introduced.

14 THE COURT: These cards are on
15 automobile insurance coverage. What does that have
16 to do --

17 MR. MORROW: It reflects names.
18 State Farm. Those were the vehicles that were
19 insured that she's already testified to.

20 THE COURT: She's testified that
21 they had house, car, life insurance.

22 MR. WATKINS: Just corroborates. It

2949

1 is further evidence and --

2 THE COURT: Her testimony is the
3 evidence. This is duplicative. Adds nothing to
4 her testimony.

5 MR. CONSOLDANE: We would object.

6 MR. WATKINS: They were issued
7 cards.

8 THE COURT: You can ask her if they
9 were issued cards. That itself doesn't add
10 anything.

11 (End of Side Bar.)

12 Q. (By Mr. Morrow) As an insurance agent have
13 you ever had occasion to examine another
14 company's insurance policy?

15 A. Yes.

16 Q. Are you able to interpret some revisions in
17 other insurance policies?

18 A. Yes.

19 Q. That is because of your training, your
20 background, your experience and your
21 education?

22 A. Yes.

2950

1 Q. I'm going to hand you what has been marked
2 previously as State's Exhibit 322 and ask
3 you to take a look at that, please.

4 MR. LEWIS: We have to put an
5 objection on the record before he goes any further.
6 (In-chambers with Reporter present.)

7 THE COURT: We're in-chambers
8 outside of the presence of the Jury. The Defense
9 waives presence of the Defendant?

10 MR. LEWIS: Waive presence of the
11 Defendant. I believe Mr. Morrow is going to the
12 point where he's going to show the Exhibit to the
13 witness and really it is a Zurich life insurance
14 policy. It is not a State Farm insurance policy
15 and he's going to have her testify in regard to it.
16 He's going to have her testify regarding the
17 interpretation of terms or whatever the case may
18 be, as he has with State Farm. However, that is
19 not a State Farm insurance policy, it is another
20 insurance company. The language could be
21 different, and she wouldn't be qualified to give
22 any opinions in regard to that insurance policy.

2951

1 MR. CONSOLDANE: Further, she can't
2 testify whether that policy is still in force or
3 whether it has been assigned to anybody. For her
4 to testify is completely wrong.

5 MR. MORROW: If I may, there's a
6 certification on the cover of that policy, which
7 has been previously provided to the Court,
8 previously discussed, that indicates that is a true
9 and accurate copy of the policy that was presently
10 in full force and effect on the date that Robert
11 Fingerhut passed away. She's testified she's been
12 an agent in excess of 15 years.

13 THE COURT: She's registered as an
14 insurance agent. She can be asked if she -- what
15 it is. It is a policy. The policy is
16 self-authenticating in that it is certified by
17 Zurich as being a valid document. So I think that
18 is a valid way for them to get this in. The other
19 way would be to bring somebody from Zurich and that
20 is not necessary in this case. So your objection
21 is noted and overruled.

22 (End of Side Bar discussion.)

2952

1 Q. (By Mr. Morrow) You had an opportunity to
2 look at that policy?

3 A. Yes.

4 Q. And are you able to determine who the named
5 insured is on that policy?

6 A. The named insured is Robert Fingerhut.

7 Q. And does that policy have a designation of a
8 beneficiary?

9 A. Yes, primary beneficiary is Donna Roberts.

10 Q. And are you able to determine the face amount
11 of that policy?

12 A. Yes, \$250,000.

13 Q. Is there an effective date on that policy that
14 you are able to determine?

15 A. August 19, 1998.

16 MR. MORROW: Thank you. No further
17 questions.

18 CROSS EXAMINATION BY MR. LEWIS:

19 Q. Kathy, how is the insurance business going?

20 A. Good.

21 Q. Everybody needs it. You have been an agent
22 since 1988, correct?

2953

1 A. Correct.

2 Q. And you did a lot of business, we said Robert
3 Fingerhut but actually, I guess -- strike
4 that. Tell the ladies and gentlemen,
5 what an insurable interest is.

6 A. Well, with the State Farm, you insure someone,
7 I mean if you designate a beneficiary, if
8 it is not a spouse, children, that type
9 of thing, immediate family members, they
10 want to know what the insurable interest
11 is. In other words, just a friend down
12 the street couldn't take a life insurance
13 policy out on me especially without my
14 knowledge. We have to know what the
15 insurable interest is and that is
16 designated to us by the named insured.

17 Q. Well, insurable interest, isn't that really
18 the value of something, like I'm alive, I
19 am breathing, I work, I support --
20 insurable interest is my life, that's the
21 life insurance business, right?

22 A. Right.

2954

1 Q. If it is a motor vehicle, the insured interest
2 would be the person who owns the vehicle,
3 right?

4 A. Correct.

5 Q. And the title holder of that is the person
6 that has that little yellow certificate
7 and it is recorded over in the County
8 Recorder's office, right, the Title
9 Bureau?

10 A. Right.

11 Q. And let's just talk about these cars for a
12 minute. The insurance was actually in
13 the name of Donna M. Roberts, correct?

14 A. Right.

15 Q. And she's the one who had insurable interest
16 in the property, right?

17 A. Yes.

18 Q. So that means that she was the title holder of
19 those motor vehicles, or I think in this
20 case, they were leased vehicles?

21 A. The two Chryslers were.

22 Q. And what was the insurable interest of

2955

1 Mr. Robert Fingerhut in those vehicles?

2 A. I was told they were used for business.

3 Q. Used for business, but what I'm asking you is,
4 what insurable interest did he have in
5 it? Did he have any insurable interest
6 in it? Was he the owner of the vehicle
7 or the leaser of the vehicle?

8 A. I would have to see the title. I'm just
9 telling you to my knowledge I was told to
10 make Donna Roberts the named insured, and
11 at that particular time, I was under the
12 impression that they were married.

13 Q. You were under the impression that they were
14 married?

15 A. Yes. He referred to her as his wife.

16 Q. Does it surprise you to know that he was
17 divorced from her in 1985?

18 A. I was shocked when I found out.

19 Q. A lot of things -- okay. Maybe that is the
20 reason why he told you to put it in Donna
21 Roberts' name. I guess she was the
22 leaser and the title holder, that is the

2956

1 insurable interest, right?

2 A. Correct.

3 Q. So, Mr. Fingerhut isn't an owner or leaser of
4 the car and he's not the spouse of Donna
5 Roberts, so the insurance cards, I think
6 you just showed us, all of that did was
7 gave him permission to operate the motor
8 vehicle and he would be covered, right?

9 A. Correct.

10 Q. You can have that situation where you could
11 have -- I am the owner of the vehicle,
12 and my lovely fiancée', I like her a lot
13 and I say, you know, call my State Farm
14 agent up -- its competition up, State
15 Farm agent up, and all I have to do is I
16 can put her on the policy, can't I?

17 A. Yes.

18 Q. And be covered?

19 A. Yes.

20 Q. If I am the title holder, or if I leased my
21 vehicle, she doesn't have any insurable
22 interest or anything in the vehicle, does

2957

1 she? She doesn't own it, right?

2 A. ~~the~~ Correct. ~~that~~ ~~only~~

3 Q. So, if I had a fight with her, which I don't
4 do, but if I had a fight with her and I
5 said, that is it, baby at 12:00 today or
6 whatever time it is, it is 20 to 12, I
7 said, "That's it, you can't use my car
8 ~~more and~~ anymore." And she took my car, I could
9 go down and file criminal charges against
10 her, couldn't I?

11 A. I suppose you could.

12 Q. I can report it stolen to you, right?

13 A. Yes.

14 Q. So, there's no insurable interest there. You
15 are just insuring that somebody else can
16 operate it. It doesn't really belong to
17 Mr. Fingerhut, it really belonged to
18 Donna Roberts, right?

19 A. Right.

20 Q. And as a matter of fact, it wasn't just the
21 2001, it was also the 2000. That is the
22 silver and burgundy one. Do you remember

2958

1 the colors?

2 A. They stated them. I didn't. I think I only
3 saw the silver.

4 Q. The file you brought, is that their entire
5 file for all of the years for insurance?

6 A. It is not complete, but it is quite a few
7 things that they had.

8 Q. Was it Mr. Morrow here and Mr. Watkins that
9 asked you to bring whatever, certain
10 things in there or did you just happen to
11 bring what you thought was necessary?

12 A. They just told me to bring the file that I had
13 in my office.

14 Q. Let's go back, there's a couple of other
15 things, too. The residence insurance.

16 That is the 254 Fonderlac?

17 A. Yes.

18 Q. And is Mr. Fingerhut named as the insured on
19 that policy?

20 A. No, it was Donna Roberts.

21 Q. Let's go back again to definition of insurable
22 interest. She would have been the owner

2959

1 of the property then, correct?

2 A. Correct.

3 Q. Mr. Fingerhut, he's divorced so he had no
4 insurable interest in the property,
5 right?

6 A. No.

7 Q. If anything happened to that residence, if
8 there was a fire, you would pay the
9 proceedings to who?

10 A. Donna Roberts and the mortgage company.

11 Q. And incidentally that mortgage, the mortgage
12 on that property, do you recall whose
13 name that is in or who was the obligator?

14 A. I don't have that in the file. I could get
15 that for you.

16 Q. So, Mr. Fingerhut wasn't the owner of 254
17 Fonderlac, he had no insurable interest.
18 He was not the owner or leaser of the
19 2001 Chrysler. He wasn't the owner or
20 leaser of the 2000 Chrysler. So he
21 didn't own any of that. He had no
22 insurable interest. No interest at all

2960

1 in it, right?

2 A. Correct.

3 Q. He was divorced in 1985. So, the relation of
4 these two parties -- actually, once you
5 are divorced, that is almost like naming
6 a stranger down the street, isn't it?
7 Ex-wives don't come back and live with
8 husbands. Just go right over here two
9 blocks to Domestic Court. It doesn't
10 normally happen that way. It's a
11 stranger as far as the law is?

12 A. You have to tell me. I don't know the law.

13 Q. What I'm saying is, that once you are
14 divorced, as far as the law is concerned,
15 forgetting child support or the children,
16 you are two separate people, you can do
17 what you want and date who you want and
18 see who you want?

19 A. Correct.

20 Q. And you can kick anybody out of the house you
21 want if it is your house and you can kick
22 anybody out and stop them from using a

2961

1 car if it is your car, right?

2 A. Right.

3 Q. Let's talk about -- there's some other real
4 estate, is there not or some other
5 properties?

6 A. Yes.

7 Q. Whose name was the insurable interest in those
8 properties?

9 A. Donna Roberts.

10 Q. Did Robert Fingerhut have any insurable
11 interest at all in any of those, is he
12 named?

13 A. No.

14 Q. So, Donna Roberts was a titled holder of all
15 of the real estate?

16 A. Correct.

17 Q. There was also the business. You said you
18 insured the business. The business,
19 let's take the Warren business, the
20 terminal. What was the -- do you recall
21 what the business name is for that?

22 A. They didn't give me an actual business name.

2962

1 They just had it as Donna Roberts.

2 Q. One more time. Insurable interest, the
3 insurable interest in the business would
4 be the person named, so that is Donna
5 Roberts?

6 A. Yes.

7 Q. If anything happened to the business, the
8 proceedings of any insurance policy would
9 be paid to who?

10 A. Donna Roberts.

11 Q. And Robert Fingerhut don't appear anywhere,
12 does he?

13 A. Correct.

14 Q. The Youngstown terminal, whose name is that
15 insured interest in?

16 A. Donna Roberts.

17 Q. If anything happened to the Youngstown
18 terminal, all of the proceedings of
19 insurance to be paid to the owner who
20 is --

21 A. Donna Roberts.

22 Q. It is amazing. Mr. Fingerhut calls and talks

2963

1 to you, but he doesn't exist anywhere as
2 an owner, does he? Kind of unusual?

3 A. I thought so. There was an occasion where I
4 did put him down and he told me no,
5 change it to Donna.

6 Q. Let me ask you another question. Let's say
7 for instance that -- how much was the
8 insurance on the house, say for instance,
9 just ballpark?

10 A. I think it was, the dwelling was 170,000
11 ballpark.

12 Q. Let's say that there was a party over there.
13 And all of the guests came in and it is a
14 residence in Howland and all of the
15 people and Mr. Fingerhut or Donna,
16 whatever, two separate people, but let's
17 say they let the booze flow and everybody
18 gets a little topsy turvy and they pull
19 out of the Avalon Estates and go down 82,
20 hopefully they won't hit Bridget. And
21 they came down and hit five people and
22 they were sued for a billion dollars.

2964

1 They would be suing, let's see, Donna
2 Roberts has the insurable interest in the
3 house, it's her policy. You might be
4 able to cover, I don't know what the
5 liability was that was for the residence
6 for fire, if it was liability, let's say
7 500,000, right?

8 A. I don't think it was that high.

9 Q. Two hundred thousand. If they were sued, and
10 they got a judgment for a billion dollars
11 from a nice Jury sitting in a box like
12 this, the insurance company says, "Here's
13 your check, I'll give you the 200,000."

14 Donna Roberts is on the hook, isn't she?

15 A. Correct.

16 Q. Where is Robert Fingerhut? Is Robert
17 Fingerhut anywhere in there
18 theoretically?

19 A. Not according to the insurance company.

20 Q. He's nowhere to be found. The same would
21 apply to the bus terminal. The same
22 would apply to the two motor vehicles.

2965

1 The same would apply to all of the
2 property, real estate, right?

3 A. Right.

4 Q. On the insurance policies, the State Farm
5 insurance policy -- well, this would be
6 bad. If Robert and Donna got in a real
7 big fight, you know, what he's done is
8 kind of goofed himself up, hasn't he?
9 Everything is in her name, isn't it?
10 she's divorced, everything is in her
11 name. It is her property, right?

12 A. Correct.

13 Q. Everything. Let's talk about State Farm
14 insurance policy. There are two
15 provisions in there, one is the
16 beneficiary designation, correct?

17 A. Correct.

18 Q. You indicated to Mr. Morrow that Mr. Fingerhut
19 designated Donna as the beneficiary,
20 correct?

21 A. Correct.

22 Q. And on that, if you look at the beneficiary

2966

1 page -- would you do that for me?

2 A. Yes.

3 Q. Are there any alternative beneficiaries in
4 case Donna Roberts is no longer with us?

5 A. No.

6 Q. So that is all blank, it is just Donna
7 Roberts, right?

8 A. Correct.

9 Q. Now, in order to change a beneficiary, they
10 would have to fill out the requisite
11 forms for State Farm in regard to change
12 of beneficiary, correct?

13 A. Yes.

14 Q. Just out of curiosity, those forms require
15 witnesses and a notary or how formal are
16 they?

17 A. They require that I visually witness his
18 signature and I have to sign too and date
19 it.

20 Q. Now there's another provision in the insurance
21 policy called the assignment provision.
22 Are you familiar with that?

2967

1 A. Yes.

2 Q. They can assign, he can assign this insurance
3 policy, actually to somebody else,
4 because technically, he was, I take it
5 back -- he didn't exist. He was the
6 owner of the policy, right?

7 A. Correct.

8 Q. In this case, he was also the owner?

9 A. Right.

10 Q. And of course he could stop paying at any time
11 or cancel it. They could call up in two
12 seconds and cancel it, right?

13 A. Correct.

14 Q. Gone. But he could also assign the policy,
15 can he not?

16 A. As being someone else owning the policy?

17 Q. Yes.

18 A. Yes.

19 Q. And in order to assign it, how would -- do you
20 have the forms that require assignment?

21 A. We do the same type of form. It's a request

22 letter and we would change the ownership.

2968

1 We would get the owner's name, address,
2 his Social Security number. They both would
3 have to sign. Individual to witness
4 that.

5 Q. That is not what the policy says though.

6 That's maybe with State Farm, but the
7 assignment just says this --

8 A. Are you saying to assign ownership to somebody
9 else?

10 Q. Right. "You may assign this policy or any
11 interest in it. We'll recognize any
12 interest only if it's in writing and
13 filed with us. We're not responsible for
14 validity or affect of any assignment."
15 The assignment may limit that of any
16 beneficiary. What it says basically is
17 the policy can be assigned. Correct?

18 A. Yes.

19 Q. You will only recognize it if you have receipt
20 of it, that makes sense?

21 A. Right.

22 Q. So, Mr. Fingerhut could go down and say, for

2969

1 instance he wanted to make sure that
2 maybe his kids got some money. So he
3 would take out what is called an
4 assignment form, and he could designate
5 what the policy is, designate the
6 instrument. Identifies the tangible
7 object being the policy which the paper
8 is reflective of that. I hereby assign
9 to Michael Fingerhut, the net proceeds of
10 this policy, whatever, and once it is
11 assigned to Michael Fingerhut, he becomes
12 the owner. The owner has the power in
13 that policy to do what, can he designate
14 the beneficiary?

15 A. Yes, he can once you become the owner.

16 Q. In other words, he can become the owner, once
17 the owner, the owner can change it, and
18 where is Donna Roberts, D.M.R., out the
19 window, right?

20 A. Right. If he changes the beneficiary.

21 Q. It can be done both ways in the assignment,
22 that can be done. It could have been

2970

1 sitting somewhere right now as far as we
2 know. We don't know. It doesn't require
3 filing with the company, it just requires
4 that if the proceeds can be paid, it has
5 to get to the company. So we don't know
6 if he did assign. He could have assigned
7 it and it is sitting someplace, right?

8 A. If I understand you correctly, you are saying
9 that he could have assigned the ownership
10 to another individual, and just State
11 Farm didn't receive that.

12 Q. Correct.

13 MR. MORROW: I object to this whole
14 line unless he has some evidence that this has
15 happened.

16 MR. LEWIS: They did a hypothetical.

17 THE COURT: I don't know where you
18 are going, but overruled.

19 Q. The assignment can be made of the ownership of
20 the policy, then the owner becomes a new
21 owner and can change the beneficiary any
22 time, right?

2971

1 A. Yes, that can happen.

2 Q. In regard to the Zurich policy. I know you're
3 not a Zurich agent or anything else, but
4 that has the assignment provisions and
5 the beneficiary very similar to this,
6 right?

7 A. Yes.

8 Q. A lot of this is codified in the insurance
9 code in the State of Ohio, right?

10 A. Correct.

11 Q. It says insurance companies don't take
12 advantage of us poor folk out here,
13 right? It is a regulated industry?

14 A. Exactly, and if we make changes to our policy,
15 we do have to file it with the State for
16 approval.

17 Q. Right. He has to approve and the State
18 Department of Insurance has to approve
19 that.

20 A. Right.

21 Q. So, in essence, everything that you have
22 insured has always been in the name of

2972

1 Donna M. Roberts, correct?

2 A. Correct.

3 Q. You have never insured or have anything that
4 is indicated any ownership by Robert
5 Fingerhut, any property, motor vehicles,
6 anything?

7 A. Correct.

8 Q. And Donna is the one who could call up and
9 say, "Cancel insurance for house,
10 terminal, Youngstown, Warren, cancel for
11 cars." She has complete control
12 theoretically, correct?

13 A. If she called and told me to cancel, I would
14 be obligated to do that.

15 Q. If Robert Fingerhut called and said, "Cancel,"
16 would you cancel?

17 A. I would be obligated to call Donna and say,
18 "He told me to cancel, is that your
19 wish?"

20 Q. And why is the reason?

21 A. Because she's the named insured on the policy.

22 MR. LEWIS: Thank you very much. I

2973

1 have another question.

change 2 Q. (By Mr. Lewis) One other question. You did
3 indicate before that if Robert Fingerhut
4 took this policy out and named somebody
5 totally unrelated to him or whatever, you
6 would want to know, the insurance company
7 would investigate that?

order the 8 A. They would ask what was the insurable
9 interest.

10 Q. What is the insurable interest -- but in order
11 to get around that, if you just take
12 somebody that is supposedly, you say is
13 my wife, and just put her name down, no
14 questions are asked, are they?

15 A. Right.

16 Q. And they may not be the wife at all?

17 A. I found that out.

18 REDIRECT EXAMINATION BY MR. MORROW:

19 Q. To the best of your knowledge, was there ever
20 an assignment done on the State Farm
21 Insurance policy?

22 A. No.

2974

1 Q. To the best of your knowledge, was there ever
2 a change of beneficiary done on the State
3 Farm Insurance policy?

4 A. No.

5 Q. To the best of your knowledge, who was paying
6 the premiums on the life insurance
7 policy?

8 A. I was under the impression it was Robert
9 Fingerhut.

10 Q. And to the best of your knowledge, Robert was
11 insured under the policies on the house
12 and the cars. If he was operating the
13 cars, was injured at the house, was
14 injured at the businesses, Robert would
15 be insured under the policies from State
16 Farm if he was operating the cars and was
17 injured?

18 A. Yes.

19 Q. He would be insured under the house if his
20 personal property was destroyed at the
21 house?

22 A. Yes.

2975

1 Q. And he would be insured under the businesses?

2 MR. LEWIS: That is not true. He's
3 not the insured under the resident policy.

4 MR. MORROW: That's not my question.

5 THE COURT: Do you have an
6 objection? I'll sustain the objection. Rephrase
7 your question.

8 Q. If Mr. Fingerhut had personal property at the
9 residence that was destroyed at the
10 residence, would it be covered?

11 A. Yes.

12 Q. And would he receive payment for those items
13 that he lost at the residence?

14 A. We would not pay directly to him. It would
15 still have to come to Donna Roberts, but
16 we would cover his property.

17 Q. Do you know how much the premiums were to
18 insure Mr. Fingerhut's life?

19 A. The annual premium which I believe he was
20 paying monthly, however, was \$1,368 was
21 the annual premium. Monthly payment was
22 \$156.

2976

1 Q. Who had the right to stop making payments on
2 that life insurance policy?

3 A. Mr. Fingerhut.

4 Q. At the time of his death, that policy was
5 still in full force and effect?

6 A. Yes, it was.

7 Q. He never stopped making any payment on it?

8 A. No.

9 MR. MORROW: No further questions.

10 RECROSS EXAMINATION BY MR. LEWIS:

11 Q. In regard to any change of beneficiary or the
12 assignment, it is just what you know,
13 correct? You haven't received anything?
14 You didn't receive anything prior to
15 December 11, is that correct?

16 A. No.

17 MR. LEWIS: Thank you.

18 THE COURT: Thank you very much,
19 Mrs. Thomas.

20 JAMES CAMPBELL

21 being duly sworn according to law, on his oath,
22 testified as follows:

2977

1 DIRECT EXAMINATION BY MR. WATKINS:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. You will be short?

5 A. I hope.

6 Q. Would you please give your name and
7 occupation?

8 A. My name is Jim Campbell, Patrolman with the
9 Howland Police Department.

10 Q. How long have you worked for the Howland
11 Police Department?

12 A. Since 1988.

13 Q. And prior to that, you were employed where?

14 A. Sheriff's department.

15 Q. And how many years of police work do you have?

16 A. I have 26 years.

17 Q. And at the Howland Police Department, on
18 December 12, what duties did you have in
19 the year 2001?

20 A. I was assigned to the patrol division, but I
21 was to go down and attend the autopsy of
22 Robert Fingerhut.

2978

1 Q. And did you take a camera with you?

2 A. Yes, I did.

3 Q. And who was at that autopsy?

4 A. Myself and the Coroner.

5 Q. And was that the autopsy that was done by

6 Dr. Germaniuk?

7 A. Yes, it was.

8 Q. And I'm going to hand you what has been marked

9 as Exhibits, various photographs, State's

10 Exhibit 61, 62, 63, 64 -- Exhibits 61

11 through 68. Look at them and then

12 identify the photograph as to whether or

13 not they are accurate of the scene that

14 you saw and also identified by number,

15 please?

16 A. State's Exhibit 61 was a photograph taken of

17 the Jersey shirt down at the Coroner's

18 office. This is a representation of the

19 actual photograph here that I have taken

20 down at the Coroner's office. Number 62,

21 a black -- appears to be dark black

22 clothing, also with my initials as an

2979

1 Exhibit that was taken down there.

2 Q. Is this at Forum Health Hospital?

3 A. Trumbull Memorial Hospital. The Coroner's
4 office downstairs, correct. Exhibit 63
5 is a photograph of the victim.

6 Q. Robert Fingerhut?

7 A. Robert Fingerhut with my initials on the back

8 that the vic also was wearing.

9 Q. What does it show?

10 A. This particular one here shows a wound to the
11 chest. State's Exhibit 64 is the
12 projectile recovered from the brain of
13 Robert Fingerhut by the Coroner at the
14 autopsy.

15 Q. And that photograph, is that the X-ray
16 photograph?

17 A. No. This is the bullet itself. State's
18 Exhibit 65 is also a photograph of the
19 bullet, a closer picture of the bullet
20 with my initials on the back. State's
21 Exhibit 66 is the victim's clothing and
22 jewelry that were removed from the body

2980

1 at the autopsy. State's Exhibit 67 is
2 the X-ray that showed the projectile in
3 the brain of Robert Fingerhut. That was
4 done at TMH that day.

5 Q. Was that X-ray shown to you by Dr. Germaniuk?

6 A. Yes. It was viewed by both him and I.

7 State's Exhibit 68 shows the Cincinnati
8 Reds jacket that the victim was wearing.

9 Q. That was on the afternoon of December 12 when
10 you were at the Trumbull Memorial
11 Hospital?

12 A. That is correct.

13 Q. How long were you there?

14 A. I can't recall exactly the timed duration. It
15 was three, four hours I was there.

16 Q. Did you receive from the doctor to put into
17 your evidence room to subsequently be
18 given to Detective Monroe, a bullet?

19 A. Yes, I did.

20 Q. I'm going to hand you what has been marked as
21 State's Exhibit 267 -- I'm sorry, 266.
22 Can you identify that?

2981

1 A. Yes, this is the projectile that the Coroner
2 sealed down at the autopsy once the
3 bullet was removed from the brain of the
4 victim.

5 Q. That was taken to the Howland Police
6 Department?

7 A. That is correct.

8 Q. And to your knowledge, it was subsequently
9 given to Detective Monroe?

10 A. That is correct.

11 Q. Did you also receive blood, a vial of blood
12 from the victim, Robert Fingerhut?

13 A. I got a vial of blood from a registered nurse
14 from TMH.

15 Q. And that was the time you were there also on
16 December 12?

17 A. At the time of the autopsy, yes.

18 Q. I'm going to show you what has been marked as
19 Exhibit 265.

20 A. That's correct. It's so marked on the vial by
21 the hospital.

22 Q. That is the blood that was of the victim?

2982

1 A. Yes, that is from Robert Fingerhut.

2 Q. And that was also taken and put in your

3 evidence room?

4 A. Everything, yes.

5 Q. And subsequently, that was also turned over to

6 Detective Monroe?

7 A. Correct.

8 Q. Would you tell the Jury what role you played
9 in this particular case as an officer for
10 Howland, other than what we have just
11 described to the Jury.

12 A. The only portion that I had was the autopsy.
13 The rest of the investigation was done by
14 the lead criminal investigators, Sergeant
15 Monroe.

16 Q. So that is about it?

17 A. That is it.

18 MR. WATKINS: Thank you.

19 CROSS EXAMINATION BY MR. CONSOLDANE:

20 Q. Good morning, Jim. How are you?

21 A. Good morning.

22 Q. You had a picture that you said had some of

2983

1 the jewelry?

2 A. Number 66.

3 Q. How much jewelry did he have?

4 A. Without looking at the sheet, it shows the
5 inventory and appears to be a watch, some
6 rings, a necklace, bracelet. It is hard
7 to tell from the photograph.

8 Q. Did you look at the jewelry?

9 A. Yes, I did.

10 Q. Was it good jewelry?

11 A. It appeared to be.

12 Q. Gold?

13 A. Gold, yes.

14 MR. CONSOLDANE: Thank you.

15 MR. WATKINS: Thank you. We don't
16 have any more witnesses for today. We have
17 witnesses for tomorrow. Most of them are out of
18 town.

19 THE COURT: Ladies and gentlemen,
20 you will be back here please at 1:00 tomorrow
21 afternoon. Let me give you, try to get you some
22 idea of where we're at time-wise here. There's no

2984

1 way we can predict, but it appears as if the State
2 may get through their evidence tomorrow, is that
3 correct?

4 MR. WATKINS: Yes.

5 THE COURT: If it isn't completed
6 tomorrow, it would be early on Friday, and the
7 Defense will have an opportunity then to present
8 any evidence they care to present if they care to
9 do so. And in any event, we'll probably return on
10 Monday for closing arguments and instruction of
11 law. It might go into Monday afternoon before we
12 get around to that or possibly Tuesday. It gives
13 you some time frame. The reason I even mention
14 this is that you might expect that as of Monday,
15 you may wish to bring clothing with you or make
16 arrangements to get clothing. So when you are
17 sequestered, you will have everything that is
18 necessary. Whatever you pack to go for a couple of
19 days on vacation, that is what you need. You
20 should make arrangements also, if you go into the
21 second day for someone to drop things off for you
22 or whatever. Because no one knows how long it will

2985

1 take the Jury to arrive at a verdict. That being
2 said, we thank you again. We'll see you back here
3 tomorrow at 1:00.

4 You are not to discuss anything or watch
5 anything on T.V. See you tomorrow at 1:00.

6 (Court in Recess at 12:10 p.m.)
7
8

9 Thursday, October 31, 2002; (In-chambers at 1:15 p.m.)

10 THE COURT: We're in-chambers out of
11 the hearing of the Jury. The defense waives
12 presence of the Defendant?

13 MR. LEWIS: We waive presence of the
14 Defendant.

15 THE COURT: The State is going to
16 show what they call power point presentation with
17 the tapes that will be played of conversations from
18 prison to Mrs. Roberts. And in conversation,
19 there's been an objection by the Defense, to the
20 photographs of Mrs. Roberts and Jackson being shown
21 in conjunction with the typed portion of the
22 conversation. I have granted the Defense motion.

2986

1 The Prosecution has removed that from the
2 presentation, and it will be strictly the typed
3 portion of the transcript.

4 MR. CONSOLDANE: I would still
5 object to that on the basis that by putting it up
6 on the large screen like that, gives it more impact
7 than it would if they just heard it on the tape. I
8 think that that is placing more emphasis on certain
9 evidence than what it would fairly be given,
10 without putting letters on the screen.

11 THE COURT: Your objection is noted
12 and overruled.

13 MR. CONSOLDANE: I do have another
14 motion at this point for a mistrial, based on
15 prosecutorial misconduct. This morning, I woke up
16 to the television report that the Prosecutor plans
17 to play these tapes from the prison, that are going
18 to implicate that Nathaniel Jackson and Donna
19 Roberts planned the murder from prison, and also
20 that there was going to be a power point
21 presentation along with these tapes, and that was
22 also in the newspaper. Your Honor, the State is

2987

1 not supposed to discuss the evidence that is going
2 to be presented in Court with the news media before
3 it is even presented in Court. That is against the
4 canons of ethics, and to try this case in the
5 newspaper, and the news media the way they have
6 been doing it, it just is not giving my clients a
7 fair trial. You could not have missed it if you
8 just happened to flip the T.V. on this morning, it
9 blasted out. I think he's been prejudiced beyond
10 repair.

11 MR. WATKINS: The power point
12 presentation, I believe, first off, we were here
13 all afternoon preparing to do this. In the
14 opening, we mentioned we're going to play tapes.
15 There's nothing in the newspaper quoting Mr. Morrow
16 or myself about any evidence. It is hard to
17 conceal especially when we mentioned in opening
18 that we're going to present these tapes in Court.
19 Nothing was revealed in the newspaper about the
20 content of the tapes, and furthermore, I mentioned
21 in my opening statement, and to take the next step,
22 the Jury has been admonished not to read the

2988

1 newspaper. I don't see how it has any prejudicial
2 impact. There's nothing mentioned specifically
3 about the evidence.

4 THE COURT: I think the main point
5 is that the Jury has to be assumed, unless
6 something would come to light, that shows he --

7 MR. WATKINS: Even if the Jury read
8 the newspaper, there's nothing in the paper that is
9 prejudiced other than what we're going to put on in
10 the presentation.

11 MR. CONSOLDANE: The headline reads
12 "damaging tapes."

13 THE COURT: If the Jury is following
14 the instructions, which assuming they are.

15 MR. CONSOLDANE: That is still not
16 right.

17 THE COURT: You mentioned ethics,
18 that is not something that I am caused, nor charged
19 with dealing with, unless it is something that
20 happens in my presence, and something that if
21 something of that nature is brought to my
22 attention, if the person who brings it to my

2989

1 attention does not notify the Ethics Bureau, then I
2 am obligated to do so. From what you say and put
3 on the record, I see nothing at all that even gets
4 into the realm of that. Unless this Jury at some
5 time would have a Perry Mason juror that stands up
6 and says, "Oh my God, I have been tainted, I read
7 the newspaper." I don't think -- I'm going to
8 continue to assume that they would not have read
9 anything of that nature.

10 MR. CONSOLDANE: It is not so much
11 that the T.V., I mean the newspaper, is that a lot
12 of people turn on the T.V. in the morning to see
13 what the weather is going to be like. That is
14 where it was blasted out. They could have
15 inadvertently heard that on T.V.

16 THE COURT: I don't think I need to
17 Voir Dire the Jury on this question. I can see
18 where certain things that might occur that that
19 would be called for. I don't think this is one of
20 those cases. Your objection is noted for the
21 record.

22 MR. WATKINS: As I understand it,

2990

1 we're going to present our final witnesses, and
2 then tomorrow we'll move for admission of our
3 Exhibits and debate whatever, and the Court would
4 entertain the objections of Defense counsel, and
5 then we would take up the State's motion regarding
6 the relevancy of evidence that may be presented by
7 the Defense, that is, we're making a motion in
8 limine to exclude what we feel is irrelevant
9 evidence.

10 THE COURT: What am I going to do
11 with the Jury in the meantime?

12 MR. WATKINS: My own thinking is, I
13 don't know, I think there's two stages of this.
14 How long they are going to be with your
15 presentation of evidence.

16 THE COURT: I don't think it is
17 proper to ask them at this point.

18 MR. WATKINS: That is none of my
19 business, unless they wish to offer that. I think
20 that if we're going to argue some of this stuff
21 tomorrow, maybe it is better to bring the Jury back
22 Monday to hear the Defense side.

2991

1 MR. LEWIS: I have got the witnesses
2 coming in tomorrow.

3 MR. WATKINS: Then you can start
4 tomorrow.

5 MR. LEWIS: They are only going to
6 take probably an hour at the most maybe.

7 MR. WATKINS: The reason I say, Jim,
8 that we argue some of these questions of law and
9 judge, is that I may stipulate to some of the stuff
10 if it is relevant.

11 MR. LEWIS: Dennis, you are not
12 going to stipulate. I want to be able to present
13 my case. I don't want your stipulation. I want to
14 present my case.

15 MR. WATKINS: No problem. I said if
16 you want to entertain it.

17 MR. LEWIS: No. I want to present
18 my case.

19 (OFF THE RECORD)

20 THE COURT: Tell me what you are
21 agreeing on by way of proceeding from this point
22 on.

2992

1 (OFF THE RECORD)

2 THE COURT: It is my understanding
3 from our conversation we have had here, that once
4 the State rests, the Defense has no objection to
5 putting your case on at that point, before the
6 Court has ruled on all of the Exhibits that are to
7 be admitted on the State's case.

8 MR. CONSOLDANE: They are going to
9 rest, and move for the admission of their Exhibits.
10 We have done that in the past. I have no objection
11 to doing that.

12 THE COURT: That is in agreement?

13 MR. CONSOLDANE: Yes. Rather than
14 keeping a Jury. It is a good thing to do.

15 MR. WATKINS: I agree. The
16 understanding is that in the event we have to
17 present more evidence, we have that opening.

18 THE COURT: You always have the
19 right to rebuttal.

20 MR. WATKINS: I meant in the sense
21 when we move our Exhibits. We close pending the
22 ruling.

2993

1 THE COURT: Yes.

2 (End of In-chamber discussion.)

3 (In Open Court with Jury present at 1:50 p.m.)

4 THE COURT: Folks, this case is
5 going to go into next week, as you know, and the
6 question has been asked by several of you,
7 concerning election day. You have one of two
8 options, and that is, the way that it looks like
9 you will be available probably to leave early,
10 somewhat early on Monday, and the final arguments
11 will not be on Monday, but on Tuesday. If you are
12 going to vote, you should take the chance Monday
13 afternoon to go to the election board. I
14 understand you are able to vote early that way at
15 the election board.

16 MR. CONSOLDANE: Or tomorrow
17 afternoon.

18 THE COURT: Wait. What am I talking
19 about?

20 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
21 OF HEARING)

22 THE COURT: There's a provision

2994

1 whereby you can vote early, but the polls open at
2 6:30 on Tuesday. We won't be starting until 9:00,
3 possibly 10:00, but it may be 9:00. You are
4 voting, the place where you vote is always close to
5 home, so that should not be too much of an
6 inconvenience to get up a little bit early and go
7 vote. You do have the two options, if you want to
8 check into the voting early possibility if that is
9 going to cause an inconvenience for you on Tuesday
10 morning. We want to make sure that everybody
11 votes. Is the State ready to call your next
12 witness?

13 MR. WATKINS: We are. The State
14 would call Linda Thomas.

15 LINDA THOMAS

16 being duly sworn according to law, on her oath,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. MORROW:

19 THE COURT: Do you mind being
20 photographed?

21 A. No.

22 Q. Would you tell us your name, please?

2995

1 A. Linda Thomas.

2 Q. And where are you employed?

3 A. I am the warden of Lorain Correctional
4 Institution in Cleveland.

5 Q. How long have you been employed there?

6 A. About 18 months.

7 Q. Is that also known as Lorain Correctional
8 Institution?

9 A. It is.

10 Q. And is there an abbreviation?

11 A. LCI.

12 Q. And prior to becoming a warden at Lorain, had
13 you been employed elsewhere?

14 A. I have been in the Department of Corrections
15 for 14 years at seven other facilities.

16 Q. You are originally from the Mahoning Valley?

17 A. Yes.

18 Q. So this is kind of a little bit of a
19 homecoming?

20 A. Yes.

21 Q. In your position as warden, are you
22 responsible for overseeing the entire

2996

1 operations of the Lorain Correctional
2 Institution?

3 A. Yes, I am. I have 2,000 inmates and
4 approximately 500 employees.

5 Q. And in that capacity, do you also supervise
6 the records that are generated at Lorain
7 Correctional Institution?

8 A. Yes.

9 Q. And are those records kept in the regular
10 course of business?

11 A. Yes.

12 Q. And are those records generated with respect
13 to various inmates that come into the
14 institution?

15 A. Yes.

16 Q. And those records are collected at the same
17 time, or maintained or created in close
18 proximity --

19 MR. LEWIS: We're going to object.
20 She's able to tell us. Just ask what the records
21 are. They are leading questions.

22 THE COURT: Go ahead. Sustain the

2997

1 objection to the leading nature.

2 Q. I'm going to hand you what has been previously
3 marked as State's Exhibit 276-C. Can you
4 take a look at that document, please, and
5 there are four documents inside of it,
6 marked within 276-C, C-1, C-2, C-3 and
7 C-4.

8 A. Sure.

9 Q. Are you able to identify those?

10 A. Yes.

11 Q. Have you seen those documents before today?

12 A. Yes.

13 Q. And can you tell us what brought those
14 documents to your attention or how you
15 were requested to produce those
16 documents?

17 A. Trooper Funelli contacted my office and my
18 investigator, Chris Monyak, and just
19 requested the records, so I signed them
20 over to the Highway Patrol.

21 Q. And they requested the records of who?

22 A. Nathaniel Jackson.

2998

1 Q. And were those records kept in the regular
2 course of your business at the Prison?

3 A. Yes.

4 Q. And are those the original records that were
5 produced?

6 A. Yes.

7 Q. And those records were then provided to
8 Trooper Funelli?

9 A. Yes.

10 Q. I am going to ask you to take a look at the
11 back of State's Exhibit 276-C. It is the
12 envelope. That is 276-C. Is there a
13 document on the back of it?

14 A. Yes.

15 Q. Could you briefly tell the ladies and
16 gentlemen what that document reflects?

17 A. That Trooper Funelli requested the records. I
18 signed them over to him and he signed
19 that he accepted them.

20 Q. Is that sheet reflecting the record of the
21 transfer of the documents?

22 A. Yes.

2999

1 Q. Do those records reflect the dates that those
2 records were created?

3 A. Yes.

4 Q. And what dates are on those records?

5 A. The intake form was completed on February 26,
6 2001. Two package lists, when property
7 was sent to him, were completed on April
8 18, 2001. And the employment history for
9 the inmate was completed on April 4,
10 2001.

11 Q. And these documents, are these documents
12 prepared by all inmates as they come into
13 the institution?

14 A. Correct.

15 Q. And they are generated by each of the inmates?

16 A. Correct.

17 Q. And each of the inmates fills out those forms?

18 A. Correct. On the intake form, the inmate signs
19 it. On the employment form, the inmate
20 completes it, and on the inmate package
21 list, they sign for what they were given.

22 Q. In State's Exhibit 276-C-1, you said that

3000

1 document is prepared by the inmate
2 himself or herself?

3 A. Correct.

4 Q. In their handwriting?

5 A. Yes.

6 Q. When were you requested to provide that
7 information with respect to this
8 individual? Do you recall what
9 information was provided to you to locate
10 this material?

11 A. Basically that it was an investigation, that
12 the inmate had been at my facility, and
13 just that Trooper Funelli needed the
14 records.

15 Q. How did you know which inmate to look for?

16 A. Trooper Funelli gave me the name.

17 Q. Did he give you any other additional
18 information?

19 A. Briefly talked about the case, what the inmate
20 was suspected of.

21 MR. LEWIS: Objection.

22 THE COURT: Your objection is

3001

1 possible hearsay coming in?

2 MR. LEWIS: Yes.

3 THE COURT: There hasn't been any
4 hearsay yet.

5 Q. Were you provided with his date of birth?

6 A. Yes.

7 Q. And his Social Security number?

8 A. Yes.

9 Q. Do you remember what those are?

10 A. Do I have them on record or do I know them?

11 Q. Do you have them on records there?

12 A. Just his number and the inmate name.

13 Q. And when we talk about inmate number, tell us
14 a little bit about an inmate number.

15 A. Lorain is the reception center for the
16 Northeast part of Ohio. When an offender
17 comes in, they are all given a number and
18 that follows them through the Department
19 of Corrections.

20 Q. And is that number placed on all documents
21 that the inmates fill out?

22 A. Yes.

3002

1 Q. Is this number that is on the bottom
2 consistent with the inmate number of
3 Nathaniel Jackson, to the best of your
4 knowledge?

5 A. Yes.

6 Q. That is Nathaniel E. Jackson?

7 A. Correct.

8 CROSS EXAMINATION BY MR. CONSOLDANE:

9 Q. My name is Tony Consoldane, and I am
10 representing Nathaniel Jackson along with
11 Mr. Lewis over there. These papers that
12 you just identified, you didn't prepare
13 those, did you?

14 A. No.

15 Q. And you didn't see them being prepared?

16 A. No.

17 Q. They were just in his file?

18 A. Correct.

19 Q. And how long ago did you pull those out of his
20 file?

21 A. April 17, 2002.

22 Q. Did you happen to look through his file when

3003

1 you pulled those papers out?

2 A. I don't recall.

3 Q. Do you recall if he was a pretty good
4 prisoner?

5 A. I have 2,000 inmates. I don't remember.

6 Q. Did you know a fellow by the name of Terry
7 Lyons?

8 A. No.

9 Q. Used to work for the Adult Parole Authority in
10 Columbus?

11 A. No.

12 MR. MORROW: Nothing further.

13 CHRISTOPHER MONYAK

14 being duly sworn according to law, on his oath,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. MORROW:

17 Q. Good afternoon. Would you please introduce
18 yourself?

19 A. Christopher Monyak, investigator at Lorain
20 Correctional Institution.

21 Q. And as an investigator at Lorain Correctional
22 Institution, what do your duties include?

3004

1 A. Conducting administrative investigations and
2 assisting the State Patrol in conducting
3 criminal investigations.

4 Q. Did there come a point in time, when you were
5 called to assist an investigation
6 regarding an individual by the name of
7 Nathaniel E. Jackson?

8 A. Yes, Sir, I was.

9 Q. And how were you familiar with Mr. Jackson?

10 A. Trooper Funelli from the State patrol
11 contacted me, and indicated that he
12 wanted to review some phone calls that
13 Mr. Jackson had made when he was
14 incarcerated at the institution.

15 Q. Was Mr. Jackson, were you able to determine
16 whether or not Nathaniel E. Jackson was
17 incarcerated at the institution?

18 A. Yes, he was.

19 Q. And how did you determine who Mr. Nathaniel
20 Jackson is? Were you provided with a
21 social security number?

22 A. Social Security number, date of birth and full

3005

1 name.

2 Q. Were you also able to determine whether or not
3 he had an inmate number?

4 A. Yes, he did.

5 Q. And you were able to -- is each inmate
6 assigned a very specific number?

7 A. Unique number for each inmate, yes.

8 Q. And do you recall what that number is?

9 A. Not off the top of my head, no.

10 Q. And when an inmate comes into the facility,
11 are they processed into the facility?

12 A. Correct. We're a reception center, so we get
13 all of the inmates from all of the
14 northern counties in Ohio.

15 Q. And are inmates permitted to make telephone
16 calls?

17 A. Yes, they are.

18 Q. Tell us about the telephone system and
19 telephone process dealing with inmates at
20 Lorain Correctional Institution.

21 A. As far as the telephone system, there's 57
22 phones throughout the institution in the

3006

1 different housing units, and there's
2 times designated for each inmate to make
3 phone calls depending on what unit they
4 are assigned to. When they initiate a
5 phone call, they will pick up a hand set,
6 and there's an 11 digit number that they
7 need to enter in to be able to make a
8 phone call. What that includes is their
9 inmate number and their date of birth.

10 Q. And when they make those, when they make those
11 phone calls, is that information recorded
12 anyplace?

13 A. Yes, it is. It is digitally recorded.

14 Q. The telephone calls are digitally recorded?

15 A. Correct.

16 Q. What about the entry of the pin number?

17 A. That is also logged on the computer.

18 Q. So if you were able to look at the pin number,
19 you could determine an inmate's
20 institution number along with his date of
21 birth from that information?

22 A. Correct.

3007

1 Q. And the telephone conversations, when the
2 inmate makes a telephone conversation,
3 you testified that they are digitally
4 recorded?

5 A. Yes.

6 Q. Are those records maintained at the facility?

7 A. Yes, they are.

8 Q. How long are they maintained there?

9 A. A minimum of six months.

10 Q. And in particular, tell us a little bit about
11 the digital recording system. How
12 accurate of a system is it,
13 tamperability, that kind of information?

14 A. There's security features built into the
15 system that you are not able to alter the
16 recordings in any way. Basically when it
17 is recorded on a hard drive, you need to
18 have the program that comes with the
19 system to be able to bring that phone
20 call back up and listen to it. There's
21 no way to alter it or to change it in any
22 way.

3008

1 Q. Is that part of your duties as an investigator
2 as well as working the phone system?

3 A. Yes.

4 Q. Who is in charge of the phone system?

5 A. It is actually provided to the institution by
6 MCI and the institutional investigator of
7 each institution is responsible for it.

8 Q. Is that your ultimate responsibility?

9 A. Yes, it is.

10 Q. And you have had -- what kind of training have
11 you had with respect to that phone
12 system?

13 A. Actually, when it was first installed back in
14 1997, they sent us to Columbus for
15 training, and then we had like on the job
16 training with it also, and then they
17 updated it approximately a year ago, and
18 we had additional training with that.

19 Q. And in your job as investigator, are you able
20 to extract the phone calls from the
21 system?

22 A. Yes, we are.

3009

1 Q. And how is that done?

2 A. We got a computer in my office that searches all
3 of the phone calls, and there's different
4 fields that we can search to pull up a
5 phone call. We can search it by the
6 destination or the number that was
7 actually called. We can search it by the
8 pin number that was entered to make the
9 phone call. We can search it by the
10 housing unit that the phone call
11 originated from. There's many different
12 ways to pull up the phone calls.

13 Q. And are the phone calls tracked under each of
14 those different scenarios?

15 A. Yes, they are.

16 Q. Are they tracked by the phone call to where it
17 is made?

18 A. The destination number, the actual phone in
19 the facility, which phone was used, the
20 pin number that was used to make the
21 phone call, or the duration of the phone
22 call.

3010

1 Q. And did there come a point in time when you
2 compiled information with respect to an
3 inmate by the name of Nathaniel E.
4 Jackson?

5 A. That is correct.

6 Q. I'm going to hand you what has been marked as
7 State's Exhibit 360 and ask you to take a
8 look at that, please?

9 A. Okay.

10 Q. Have you seen that before?

11 A. Yes, I have.

12 Q. And where have you seen that at?

13 A. This is the report that I generated for
14 Trooper Funelli, when he came into the
15 institution.

16 Q. And when Trooper Funelli came into the
17 institution, what information was being
18 requested?

19 A. All phone calls that Mr. Jackson had made
20 while being incarcerated.

21 Q. If you could, could you please identify what
22 Mr. Jackson's inmate number is? Are you

3011

1 able to do so from that document?

2 A. Yes, I can.

3 Q. Can you explain to the ladies and gentlemen
4 where that information is located?

5 A. There are, I would say approximately 12
6 columns in this report. Right in the
7 middle of the report is a column labeled
8 pin ID. Pin stands for personal
9 identification number, and it is an 11
10 digit number that includes his inmate
11 number, which is 399469, and then the
12 four digit date of birth, which is the
13 month and the day and that is [REDACTED], which
14 is [REDACTED].

15 Q. And you generate this report, and was able to
16 define how many phone calls?

17 A. There were 72 phone calls all together that
18 had been attempted, using that pin
19 number, and 18 that had been actually
20 recorded, which means that they were
21 completed phone calls.

22 Q. Let me back up. This process that you have,

3012

1 it records the phone call that is being
2 called?

3 A. Yes.

4 Q. How is that generated?

5 A. It is stored in the computer along with the
6 actual phone call recording, and when we
7 do a query or search in the computer, as
8 I stated earlier, we can search by the
9 phone number that was called or pin
10 number that was used to make those phone
11 calls.

12 Q. And are there any safeguards built into the
13 system with respect to three way phone
14 calls?

15 A. There's a detection system built in that if it
16 detects a tone or ring, actually --

17 Q. First, could you explain to the ladies and
18 gentlemen what a three way call is?

19 A. A three way call is as far as a correctional
20 institution, an inmate would call
21 somebody that would -- a collect call and
22 that person would call a third person and

3013

1 connect the two individuals, and that way
2 it prevents or circumvents the collect
3 call process.

4 Q. And is there a device built in to preclude
5 that from happening in the system?

6 A. There's software built into the system that
7 will detect three way phone calls.
8 Basically it gives three choices. We can
9 either just ignore the alert, we can
10 identify the alert or we can disconnect
11 the call.

12 Q. And you are also able to identify the number
13 that the call is being made to?

14 A. As far as the third party call, it will not
15 detect that. It will only detect the
16 initial phone number that was put into
17 the system.

18 Q. And so there were 78 different phone calls
19 attempted?

20 A. 72.

21 Q. And how many of those were accepted phone
22 calls?

3014

1 A. 18.

2 Q. And of those 18 phone calls, how many

3 different telephone numbers were called?

4 A. Of the 18 that went through, they were all to
5 the same phone number.

6 Q. And what is that phone number?

7 A. [REDACTED]

8 Q. As a possibility that another inmate can use one
9 inmate's numbers to make phone calls?

10 A. It is possible, yes.

11 Q. And in this particular case, was that issue
12 presented to you?

13 A. Yes, it was.

14 Q. And what if anything, were you able to do?

15 A. Along with tracking the pin number, we also
16 look at the location of where the phone
17 call was made from, and compare that to
18 the location where the inmate is actually
19 housed at, and if we see phone calls that
20 are being made in areas where he isn't
21 assigned, then that verifies that there's
22 another individual using his pin number.

3015

1 Q. And the -- what is the time frame of the 18
2 accepted phone calls, between what dates?

3 A. The first one that was accepted was on this
4 report, October 25 and the last phone
5 call was December 8.

6 Q. Of what year?

7 A. 2001.

8 Q. And during that time frame, were you able to
9 track Mr. Jackson's locations?

10 A. Yes, we were.

11 Q. And how many different locations was he in
12 during that time frame?

13 A. He was in three separate locations during that
14 incarceration.

15 Q. And how many different moves were done between
16 those different locations?

17 A. As far as the unit where he initially went
18 in --

19 Q. What I'm asking, he was in three separate
20 housing units?

21 A. Correct.

22 Q. Was he moved back and forth between housing

3016

1 units at any time or did he stay in one
2 housing unit before he moved to the
3 second and stayed there and moved to a
4 third?

5 A. Correct.

6 Q. You were able to track his movement at that
7 point?

8 A. Yes.

9 Q. And the pin numbers correspond with his move
10 in the institution as well?

11 A. All of the pin numbers that were in there were
12 entered in housing units where he was
13 assigned.

14 Q. Did there come a point in time when you were
15 able to track a 19th phone call that was
16 accepted?

17 A. Yes, I was.

18 Q. Could you explain that to the ladies and
19 gentlemen?

20 A. When Trooper Funelli first came in, I did a
21 search report by his pin number, which
22 gave me all of the phone calls that were

3017

1 made using his pin number. Subsequently,
2 probably about I would say a month later
3 or so, I went back and I made a second
4 search, and I searched phone calls going
5 specifically to that phone number, the
6 phone number where the first 18 went to
7 and I was able to locate a 19th call that
8 it is was made to that phone number using a
9 different pin number.

10 Q. And were you able to connect that phone call
11 as well?

12 A. Yes, I was.

13 Q. I'm going to hand you what has been marked as
14 State's Exhibit 361 and ask you to take a
15 look at that, please?

16 A. Okay.

17 Q. Are you able to identify that?

18 A. Yes, I am.

19 Q. How are you able to identify that?

20 A. It is my handwriting on the front of the CD.

21 Q. If you could, please explain to the ladies and
22 gentlemen, what that is?

3018

1 A. It is his name and number, the number of phone
2 calls, and the dates that the phone calls
3 were made, October 5, 2001 through
4 December 8, 2001.

5 Q. Could you explain what that is actually, what
6 that CD is?

7 A. The system, rather than using cassette tapes,
8 the system since it is digitally
9 recorded, we transfer it into digital
10 format onto a CD that is able to be
11 played on any laptop computer or desk top
12 computer. All 19 phone calls that are
13 made are all on this one CD.

14 Q. I'm going to hand you what has been previously
15 marked as State's Exhibits 276-C-1, C-2,
16 C-3, and C-4. I'll ask you to take a
17 look at those documents, please. Are you
18 able to assign inmate numbers on those
19 documents?

20 A. Yes.

21 Q. And can you tell me what those inmate numbers
22 are, please?

3019

1 A. Again, it is 399469. And that is on all four
2 forms.

3 Q. And is that the same inmate number that you
4 have with the information with respect to
5 Nathaniel Jackson?

6 A. Yes.

7 Q. The date of birth was [REDACTED]?

8 A. Correct.

9 Q. After you compiled that CD with the 19 phone
10 calls on it, what did you do with it?
11 Who did you give it to?

12 A. I gave it to Trooper Funelli.

13 Q. And is that the end of your involvement with
14 respect to this case?

15 A. Basically, yes.

16 MR. MORROW: Nothing further. Thank
17 you.

18

19

20


21

22

3020

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.


MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

VOLUME 13

FILED

JUL 09 2003
3021

MARCIA J. MENDEL, CLERK
SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
TRIAL COURT CASE NO. 01-CR-794
SUPREME COURT OF OHIO CASE NO. 03-137

STATE OF OHIO)
)
Plaintiff)
)
-vs-)
)
NATHANIEL JACKSON)
)
Defendant)

TESTIMONY

BE IT REMEMBERED, that on Thursday, October 31,
2002, and Friday, November 1, 2002, these proceedings
came on to be heard before one of the Judges of this
Court, John M. Stuard, in Courtroom No. 2, on High
Street, Warren, Ohio, before the case heretofore
filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

3022

A P P E A R A N C E S

On Behalf of the State of Ohio:

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Trumbull County Prosecutor

Charles L. Morrow

Assistant Prosecuting Attorney

160 High Street, N.W.

Warren, Ohio

On Behalf of the Defendant:

Anthony V. Consoldane, Attorney at Law

James F. Lewis, Attorney at Law

State of Ohio Public Defender's Office

328 Mahoning Ave., N.W.

Warren, Ohio

1

I N D E X

2

PAGE NO.

3

Search Warrant Hearing
(December 20, 2001)

3

4

Initial Appearance of Nathaniel Jackson
Hearing (December 21, 2001)

9

5

6

Initial Appearance of Donna Roberts
Hearing (December 21, 2001)

12

7

Motion to Intervene
(December 31, 2001)

19

8

9

Arraignment of Donna Roberts (co-defendant)
Arraignment of Nathaniel Jackson

57

10

Waiver of Speedy Trial
(January 23, 2002)

64

11

12

Hearing on Motions
(March 20, 2002)

67

13

Hearing on Motion to Suppress Evidence
(April 17, 2002)

185

14

15

WITNESSES AT SUPPRESSION HEARING:

16

JEFFREY R. HOOLIHAN

Direct Examination by Mr. Watkins

190

17

Cross Examination by Mr. Lewis

231

18

Redirect Examination by Mr. Watkins

274

18

Recross Examination by Mr. Lewis

280

19

DET. SGT. PAUL MONROE

Direct Examination by Mr. Lewis

288

20

Examination by The Court

312

21

NATHANIEL JACKSON

Direct Examination by Mr. Consoldane

314

22

Cross Examination by Mr. Watkins

324

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	Court's Opening Remarks (Volume 2)	381
3	Motion for Mistrial	415
4	<u>VOIR DIRE</u>	
5	Hardship Excuses	422
6	Death Penalty Qualification & Media	664
7	(Volume 3)	
8	Motion for Change of Venue & Motion to	
9	Dismiss	1835
10	<u>GENERAL VOIR DIRE</u>	1857
11	OPENING STATEMENT ON BEHALF OF STATE OF OHIO	2064
12	OPENING STATEMENT ON BEHALF OF THE DEFENDANT	2093
13	<u>STATE'S WITNESSES:</u>	
14	<u>PAULA CARSON</u>	
15	Direct Examination by Mr. Morrow	2100
16	Cross Examination by Mr. Lewis	2105
17	<u>JAMES C. DANIELS</u>	
18	Direct Examination by Mr. Watkins	2111
19	Cross Examination by Mr. Lewis	2124
20	Redirect Examination by Mr. Watkins	2138
21	<u>JOSE SANCHEZ</u>	
22	Direct Examination by Mr. Watkins	2139
23	Cross Examination by Mr. Lewis	2156
24	Redirect Examination by Mr. Watkins	2168
25	<u>FRANK E. REYNOLDS</u>	
26	Direct Examination by Mr. Watkins	2172
27	Cross Examination by Mr. Lewis	2191
28	Redirect Examination by Mr. Watkins	2201
29	<u>PAUL MONROE</u>	
30	Direct Examination by Mr. Watkins	2202
31	Cross Examination by Mr. Consoldane	2392
32		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>MIKE YANNUCCI</u>	
	Direct Examination by Mr. Morrow	2406
3	Cross Examination by Mr. Lewis	2418
	Redirect Examination by Mr. Morrow	2428
4		
	<u>RICHARD TACKETT</u>	
5	Direct Examination by Mr. Morrow	2428
	Cross Examination by Mr. Lewis	2434
6		
	<u>ANTHONY LESHNACK</u>	
7	Direct Examination by Mr. Watkins	2445
	Cross Examination by Mr. Consoldane	2455
8		
	<u>FRANK DILLON</u>	
9	Direct Examination by Mr. Watkins	2457
	Cross Examination by Mr. Lewis	2480
10		
	<u>DR. THEODORE SOBOSLAY</u>	
11	Direct Examination by Mr. Watkins	2512
12		
	<u>DR. HUMPHREY GERMANIUK</u>	
	Direct Examination by Mr. Watkins	2520
13	Cross Examination by Mr. Consoldane	2576
	Redirect Examination by Mr. Watkins	2583
14	Recross Examination by Mr. Consoldane	2585
	Redirect Examination by Mr. Watkins	2586
15		
	<u>JOSE FLORES</u>	
16	Direct Examination by Mr. Watkins	2587
	Cross Examination by Mr. Lewis	2599
17		
	<u>EDWARD LULLA</u>	
18	Direct Examination by Mr. Watkins	2604
	Cross Examination by Mr. Lewis	2624
19		
	<u>JOHN STAMPER</u>	
20	Direct Examination by Mr. Watkins	2645
	Cross Examination by Mr. Lewis	2652
21		
22		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JEFF DIAMANTES</u>	
	Direct Examination by Mr. Watkins	2654
3	Cross Examination by Mr. Lewis	2659
	Redirect Examination by Mr. Watkins	2661
4		
	<u>MICHAEL ROBERTS</u>	
5	Direct Examination by Mr. Morrow	2663
	Cross Examination by Mr. Consoldane	2695
6	Redirect Examination by Mr. Morrow	2704
	Recross Examination by Mr. Consoldane	2706
7		
	<u>CYNTHIA MAYLE</u>	
8	Direct Examination by Mr. Watkins	2706
	Cross Examination by Mr. Consoldane	2728
9		
	<u>DALE LAUX</u>	
10	Direct Examination by Mr. Watkins	2735
	Cross Examination by Mr. Consoldane	2751
11	Redirect Examination by Mr. Watkins	2790
	Recross Examination by Mr. Lewis	2798
12		
	<u>BRENDA GERARDI</u>	
13	Direct Examination by Mr. Watkins	2803
	Cross Examination by Mr. Lewis	2840
14		
	<u>STEVE GREENE</u>	
15	Direct Examination by Mr. Morrow	2851
	Cross Examination by Mr. Lewis	2875
16		
	<u>CHRIS ELLINGTON</u>	
17	Direct Examination by Mr. Morrow	2881
	Cross Examination by Mr. Consoldane	2888
18		
	<u>JIM McCOY</u>	
19	Direct Examination by Mr. Morrow	2890
	Cross Examination by Mr. Lewis	2899
20		
	<u>JILL KENYON</u>	
21	Direct Examination by Mr. Morrow	2900
	Cross Examination by Mr. Consoldane	2908
22		

v

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JENNIFER ROBINSON</u>	
	Direct Examination by Mr. Morrow	2911
3	Cross Examination by Mr. Lewis	2920
4	<u>KATHY KIHM</u>	
	Direct Examination by Mr. Morrow	2921
5	Cross Examination by Mr. Lewis	2924
6	<u>BRIDGET PAUL</u>	
	Direct Examination by Mr. Morrow	2925
7	Cross Examination by Mr. Consoldane	2934
8	<u>KATHERINE THOMAS</u>	
	Direct Examination by Mr. Morrow	2936
9	Cross Examination by Mr. Lewis	2952
	Redirect Examination by Mr. Morrow	2973
10	Recross Examination by Mr. Lewis	2976
11	<u>JAMES CAMPBELL</u>	
	Direct Examination by Mr. Watkins	2977
12	Cross Examination by Mr. Consoldane	2982
13	<u>LINDA THOMAS</u>	
	Direct Examination by Mr. Morrow	2994
14	Cross Examination by Mr. Consoldane	3002
15	<u>CHRISTOPHER MONYAK</u>	
	Direct Examination by Mr. Morrow	3003
16	Cross Examination by Mr. Lewis	3023
	Redirect Examination by Mr. Morrow	3037
17	<u>TROOPER GERALD FUNELLI</u>	
18	Direct Examination by Mr. Morrow	3038
	Cross Examination by Mr. Lewis	3046
19	<u>DET. SGT. PAUL MONROE</u>	
20	Redirect Examination by Mr. Watkins	3049
	Recross Examination by Mr. Lewis	3063
21	<u>BRAD CAIN</u>	
22	Direct Examination by Mr. Lewis	3106

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>TAMMIE KAYE</u>	
3	Direct Examination by Mr. Consoldane	3118
4	<u>ROBERT STANTON</u>	
5	Direct Examination by Mr. Lewis	3119
6	Cross Examination by Mr. Watkins	3127
7	MOTIONS	3200
8	<u>CARMEN OLIVA</u>	
9	Direct Examination by Mr. Watkins	3267
10	Cross Examination by Mr. Lewis	3278
11	<u>BARRY RICKER</u>	
12	Direct Examination by Mr. Watkins	3290
13	Cross Examination by Mr. Lewis	3300
14	<u>DIANA MARCHESE</u>	
15	Direct Examination by Mr. Watkins	3309
16	Cross Examination by Mr. Consoldane	3314
17	Redirect Examination by Mr. Watkins	3319
18	Recross Examination by Mr. Consoldane	3319
19	MOTION RE JURY INSTRUCTIONS	3334
20	FINAL ARGUMENT ON BEHALF OF STATE OF OHIO	3390
21	FINAL ARGUMENT ON BEHALF OF THE DEFENDANT	3438
22	FINAL ARGUMENT CONT. ON BEHALF OF DEFENDANT	3495
	REBUTTAL ARGUMENT ON BEHALF OF STATE OF OHIO	3505
	CHARGE OF THE COURT	3541
	NOVEMBER 7, 2002 (Deliberations)	3601
	NOVEMBER 8, 2002 (Deliberations)	3602
	VERDICT	3612
	(SEE SEPARATE VOLUME FOR TRANSCRIPT OF MITIGATION HEARING)	

Exhibit No.	Description	Admitted
1	911 Tape	Admitted over Obj
1A	911 Paper work	No Objection
2	Crime Scene Video	Objection Sustained
3	Crime Scene Diagram	Admitted over Obj
4	Photo	No Objection
5	Photo	No Objection
6	Photo	No Objection
7	Photo	Withdrawn
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	No Objection
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	No Objection
25	Photo	No Objection
26	Photo	No Objection
27	Photo	No Objection
28	Photo	No Objection
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	No Objection
32	Photo	Withdrawn
33	Photo	No Objection
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	No Objection
38	Photo	No Objection
39	Photo	Withdrawn
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	No Objection
44	Photo	No Objection
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	No Objection
58	Photo	No Objection
59	Photo	No Objection
60	Photo	No Objection

vii

viii

62	Photo Shirt	No Objection
63	Photo - Victim	No Objection
64	Bullet Recovered from Brain of Victim	Withdrawn
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - penisula	No Objection
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	Withdrawn
84	Blood drops - garage	No Objection
85	Garage	No Objection
86	Blood Spatters - garage	Withdrawn
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	No Objection
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	Withdrawn
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	No Objection
100	Victim -back close up	Withdrawn
101	Small key found under victim	Withdrawn
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	No Objection
108	Victim	Withdrawn
108A	Victim Face down	No Objection
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	Withdrawn
111	Victim lower torso	No Objection
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	Withdrawn
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	left rear red car	No Objection
128	left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior - Left Console	No Objection
175	Naokin w/ Blood Smear	No Objection
176	Floormat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

ix

274	Driver Side Console	No Objection
275	Passenger Side Dashboard	No Objection
276	Passenger side door - interior	No Objection
277	Driver side - steering wheel p garage door opener	No Objection
278	Left side of car w/ dashboard	No Objection
279	Rt side back seat	No Objection
280	Front driver compartment	No Objection
281	Exterior thru rear left door	No Objection
282	keys	Withdrawn
283	Cell Phone	Withdrawn
284	Keys - Blue Matt	Withdrawn
285	Driver side - release button	No Objection
286	Wagon Wheel Photo	Objection Sustained
287	Wagon Wheel Photo	Objection Sustained
288	Wagon Wheel Photo	Admitted over Obj
289	Wagon Wheel Photo	Admitted over Obj
290	Wagon Wheel Photo	Objection Sustained
291	Photograph Items Recovered Days Inn	Admitted over Obj
292	No Exhibit	
293	Days Innn Photographs	Withdrawn
294	Days Innn Photographs	Withdrawn
295	Days Innn Photographs	Admitted over Obj
296	Days Innn Photographs	Objection Sustained
297	Days Innn Photographs	Withdrawn
298	Days Innn Photographs	Objection Sustained
299	Days Innn Photographs	Withdrawn
300	Days Innn Photographs	Withdrawn
301	Days Innn Photographs	Withdrawn
302	Days Innn Photographs	Withdrawn
303	Days Innn Photographs	Withdrawn
304	Days Innn Photographs	Withdrawn
305	Days Innn Photographs	Withdrawn
306	Days Innn Photographs	Withdrawn
307	Days Innn Photographs	Withdrawn
308	Days Innn Photographs	Withdrawn
309	Days Innn Photographs	Withdrawn
310	Days Innn Photographs	Withdrawn
311	Days Innn Photographs	Withdrawn
312	Days Innn Photographs	Withdrawn
313	Days Innn Photographs	Withdrawn
314	Days Innn Photographs	Withdrawn
315	Days Innn Photographs	Withdrawn
316	Days Innn Photographs	Withdrawn
317	Days Innn Photographs	Withdrawn
318	Days Innn Photographs	Withdrawn
319	Days Innn Photographs	Withdrawn
320	Days Innn Photographs	Withdrawn
321	Days Innn Photographs	Withdrawn
322	Days Innn Photographs	Withdrawn
323	Days Innn Photographs	Withdrawn
324	Days Innn Photographs	Admitted over Obj
325	Days Innn Photographs	Withdrawn
326	Days Innn Photographs	Admitted over Obj
327	Photographs of Wirt Street	Admitted over Obj
328	Photographs of Wirt Street	Out
329	Photographs of Wirt Street	Out
330	Photographs of Wirt Street	Admitted over Obj
331	Photographs of Wirt Street	Admitted over Obj
332	Photographs of Wirt Street	Out
333	Wirt Street Photographs	Out
334	Wirt Street Photographs	Admitted over Obj
335	Front view - Nate Jackson	No Objection
336	Rear view Nate Jackson	No Objection
337	Full body shot	No Objection
338	Rt arm and Hand	No Objection
339	Front view - Nate Jackson	No Objection
340	Left & Rt knee	No Objection
341	View of Hands & Wound	No Objection

x

271D62	10/30	271D	Letters From Donna to Nate	
271D63	10/29	271D1	x13	12/03/01 Admitted xi
271D64	10/29	271D2		11/29/01 Admitted
271D65	10/29	271D3		11/29/01 Admitted
271D66	10/29	271D4		11/28/01 Admitted
271D67	10/29	271D5		11/28/01 Admitted
271D68	10/29	271D6		11/27/01 Admitted
271D69	10/29	271D7		11/27/01 Admitted
271D70	10/29	271D8		11/26/01 Admitted
271D71	10/29	271D9		11/26/01 Admitted
271D72	10/29	271D10		11/24/01 Admitted
271D73	10/29	271D11		11/23/01 Admitted
271D74	10/29	271D12		11/23/01 Admitted
271D75	10/29	271D13		11/22/01 Admitted
271D76	10/29	271D14		11/22/01 Admitted
271D77	10/29	271D15		11/22/01 Admitted
271D78	10/29	271D16		11/22/01 Admitted
271D79	10/29	271D17		11/21/01 Admitted
271D80	10/29	271D18		11/21/01 Admitted
271D81	10/29	271D19		11/20/01 Admitted
271D82	10/29	271D20		11/20/01 Admitted
271D83	10/29	271D21		11/20/01 Admitted
271D84	10/29	271D22		11/20/01 Admitted
271D85	10/29	271D23		11/19/01 Admitted
271D86	10/29	271D24		11/19/01 Admitted
271D87	10/29	271D25		11/19/01 Admitted
271D88	10/29	271D26	Empty	Admitted
271D89	10/29	271D27		11/16/01 Admitted
271D90	10/29	271D28		11/16/01 Admitted
271D91	10/29	271D29		11/15/01 Admitted
271D92	10/29	271D30	Empty	Admitted
271D93	10/29	271D31		11/12/01 Admitted
271D94	10/29	271D32		11/10/01 Admitted
271D95	10/29	271D33		11/10/01 Admitted
271D96	10/29	271D34		11/10/01 Admitted
271D97	10/29	271D35		11/10/01 Admitted
271D98	10/29	271D36		11/09/01 Admitted
271D99	10/29	271D37		11/09/01 Admitted
271D100	10/29	271D38		11/09/01 Admitted
271D101	10/29	271D39		11/09/01 Admitted
271D102	10/29	271D40		11/08/01 Admitted
271D103	10/29	271D41		11/08/01 Admitted
271D104	10/29	271D42		11/08/01 Admitted
271D105	10/29	271D43		11/07/01 Admitted
271D106	10/29	271D44		11/07/01 Admitted
271D107	10/29	271D45		11/07/01 Admitted
271D108	10/29	271D46		11/07/01 Admitted
271D109	10/29	271D47	Empty	Admitted
271D110	10/29	271D48		11/06/01 Admitted
271D111	10/29	271D49		11/06/01 Admitted
271D112	10/29	271D50	Empty	Admitted
271D113	10/29	271D51		11/05/01 Admitted
271D114	10/29	271D52		11/05/01 Admitted
271D115	10/29	271D53		11/03/01 Admitted
271D116	10/29	271D54		11/03/01 Admitted
271D117	10/29	271D55		11/02/01 Admitted
271D118	10/29	271D56		11/02/01 Admitted
271D119	10/29	271D57		11/02/01 Admitted
271D120	10/29	271D58		11/01/01 Admitted
271D121	10/29	271D59		11/01/01 Admitted
271D122	10/29	271D60	Halloween card	Admitted
271D123	10/29	271D61		10/31/01 Admitted

271D124	10/05	271D62	10/30/01	Admitted
271D125	10/04	271D63	10/29/01	Admitted
271D126	10/04	271D64	10/29/01	Admitted
271D127	10/04	271D65	10/28/01	Admitted
271D128	10/04	271D66	10/27/01	Admitted
271D129	10/04	271D67	10/26/01	Admitted
271D130	10/04	271D68	10/26/01	Admitted
271D131	10/04	271D69	10/26/01	Admitted
271D132	10/04	271D70	10/25/01	Admitted
271D133	10/04	271D71	10/25/01	Admitted
271D134	10/04	271D72	10/24/01	Admitted
271D135	10/04	271D73	10/24/01	Admitted
271D136	10/04	271D74	10/23/01	Admitted
271D137	10/04	271D75	10/23/01	Admitted
271D138	10/04	271D76	10/23/01	Admitted
271D139	10/04	271D77	10/23/01	Admitted
271D140	10/04	271D78	10/22/01	Admitted
271D141	10/04	271D79	Empty	Admitted
271D142	10/04	271D80	10/21/01	Admitted
271D143	10/04	271D81	10/20/01	Admitted
271D144	10/04	271D82	10/20/01	Admitted
271D145	10/04	271D83	10/20/01	Admitted
271D146	10/04	271D84	10/20/01	Admitted
271D147	10/04	271D85	10/19/01	Admitted
271D148	10/04	271D86	10/19/01	Admitted
271D149	10/04	271D87	10/19/01	Admitted
271D150	10/04	271D88	10/19/01	Admitted
271D151	10/04	271D89	10/18/01	Admitted
271D152	10/04	271D90	Empty	Admitted
271D153	10/04	271D91	10/18/01	Admitted
271D154	10/04	271D92	10/17/01	Admitted
271D155	10/04	271D93	10/16/01	Admitted
271D156	10/04	271D94	10/16/01	Admitted
271D157	10/04	271D95	10/15/01	Admitted
271D158	10/04	271D96	10/15/01	Admitted
271D159	10/04	271D97	10/15/01	Admitted
271D160	10/04	271D98	10/13/01	Admitted
271D161	10/04	271D99	10/13/01	Admitted
271D162	10/04	271D100	10/13/01	Admitted
271D163	10/04	271D101	10/12/01	Admitted
271D164	10/04	271D102	10/12/01	Admitted
271D165	10/04	271D103	10/12/01	Admitted
271D166	10/04	271D104	Empty	Admitted
271D167	10/04	271D105	10/12/01	Admitted
271D168	10/04	271D106	10/12/01	Admitted
271D169	10/04	271D107	10/11/01	Admitted
271D170	10/04	271D108	10/11/01	Admitted
271D171	10/04	271D109	10/11/01	Admitted
271D172	10/04	271D110	10/10/01	Admitted
271D173	10/04	271D111	10/10/01	Admitted
271D174	10/04	271D112	10/10/01	Admitted
271D175	10/04	271D113	10/08/01	Admitted
271D176	10/04	271D114	10/08/01	Admitted
271D177	10/04	271D115	10/06/01	Admitted
271D178	10/04	271D116	10/06/01	Admitted
271D179	10/04	271D117	10/06/01	Admitted
271D180	10/04	271D118	10/05/01	Admitted
271D181	10/04	271D119	10/05/01	Admitted
271D182	10/04	271D120	10/05/01	Admitted
271D183	10/04	271D121	10/05/01	Admitted
271D184	10/04	271D122	10/05/01	Admitted
271D185	10/04	271D123	10/05/01	Admitted

xii

271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

xiii

xiv

273N62	09/27/01	Adm	273N	Letters from Nate to Donna	Admitted
273N63	09/27/01	Adm	273N1	12/01/01	Admitted
273N64	09/27/01	Adm	273N2	11/30/01	Admitted
273N65	09/27/01	Adm	273N3	11/29/01	Admitted
273N66	09/27/01	Adm	273N4	11/28/01	Admitted
273N67	09/27/01	Adm	273N5	11/27/01	Admitted
273N68	09/27/01	Adm	273N6	11/26/01	Admitted
273N69	09/27/01	Adm	273N7	11/25/01	Admitted
273N70	09/27/01	Adm	273N8	11/23/01	Admitted
273N71	09/27/01	Adm	273N9	11/22/01	Admitted
273N72	09/27/01	Adm	273N10	11/20/01	Admitted
273N73	09/27/01	Adm	273N11	11/19/01	Admitted
273N74	09/27/01	Adm	273N12	11/17/01	Admitted
273N75	09/27/01	Adm	273N13	11/16/01	Admitted
273N76	09/27/01	Adm	273N14	11/14/01	Admitted
273N77	09/27/01	Adm	273N15	11/14/01	Admitted
273N78	09/27/01	Adm	273N16	11/13/01	Admitted
273N79	09/27/01	Adm	273N17	11/12/01	Admitted
273N80	09/27/01	Adm	273N18	11/12/01	Admitted
273N81	09/27/01	Adm	273N19	11/10/01	Admitted
273N82	09/27/01	Adm	273N20	11/09/01	Admitted
273N83	09/27/01	Adm	273N21	11/07/01	Admitted
273N84	09/27/01	Adm	273N22	11/06/01	Admitted
273N85	09/27/01	Adm	273N23	11/08/01	Admitted
273N86	09/27/01	Adm	273N24	11/05/01	Admitted
273N87	09/27/01	Adm	273N25	11/03/01	Admitted
273N88	09/27/01	Adm	273N26	11/01/01	Admitted
273N89	09/27/01	Adm	273N27	11/01/01	Admitted
273N90	09/27/01	Adm	273N28	10/31/01	Admitted
273N91	09/27/01	Adm	273N29	10/30/01	Admitted
273N92	09/27/01	Adm	273N30	273N31	273N32
273N93	09/27/01	Adm	273N31	10/28/01	Admitted
273N94	09/27/01	Adm	273N32	10/27/01	Admitted
273N95	09/27/01	Adm	273N33	273N34	273N35
273N96	09/27/01	Adm	273N34	10/25/01	Admitted
273N97	09/27/01	Adm	273N35	10/25/01	Admitted
273N98	09/27/01	Adm	273N36	10/25/01	Admitted
273N99	09/27/01	Adm	273N37	10/24/01	Admitted
273N100	09/27/01	Adm	273N38	10/23/01	Admitted
273N101	09/27/01	Adm	273N39	10/22/01	Admitted
273N102	09/27/01	Adm	273N40	10/21/01	Admitted
273N103	09/27/01	Adm	273N41	10/21/01	Admitted
273N104	09/27/01	Adm	273N42	10/20/01	Admitted
273N105	09/27/01	Adm	273N43	10/19/01	Admitted
273N106	09/27/01	Adm	273N44	10/18/01	Admitted
273N107	09/27/01	Adm	273N45	10/17/01	Admitted
273N108	09/27/01	Adm	273N46	10/16/01	Admitted
273N109	09/27/01	Adm	273N47	10/16/01	Admitted
273N110	09/27/01	Adm	273N48	10/15/01	Admitted
273N111	09/27/01	Adm	273N49	10/14/01	Admitted
273N112	09/27/01	Adm	273N50	10/12/01	Admitted
273N113	09/27/01	Adm	273N51	10/10/01	Admitted
273N114	09/27/01	Adm	273N52	10/10/01	Admitted
273N115	09/27/01	Adm	273N53	10/08/01	Admitted
273N116	09/27/01	Adm	273N54	10/05/01	Admitted
273N117	09/27/01	Adm	273N55	10/07/01	Admitted
273N118	09/27/01	Adm	273N56	10/04/01	Admitted
273N119	09/27/01	Adm	273N57	10/04/01	Admitted
273N120	09/27/01	Adm	273N58	10/02/01	Admitted
273N121	09/27/01	Adm	273N59	10/01/01	Admitted
273N122	09/27/01	Adm	273N60	10/01/01	Admitted
273N123	09/27/01	Adm	273N61	09/30/01	Admitted

273N124	273N62	09/27/01	Admitted
273N125	273N63	09/27/01	Admitted
273N126	273N64	07/12/01	Admitted
273N127	273N65	06/28/01	Admitted
273N128	273N66	06/09/01	Admitted
273N129	273N67	05/18/01	Admitted
273N130	273N68	05/15/01	Admitted
273N131	273N69	05/12/01	Admitted
273N132	273N70	05/10/01	Admitted
273N133	273N71	05/09/01	Admitted
273N134	273N72	05/06/01	Admitted
273N135	273N73	05/04/01	Admitted
273N136	273N74	05/03/01	Admitted
273N137	273N75	04/28/01	Admitted
273N138	273N76	02/24/01	Admitted
273N139	273N77	04/23/01	Admitted
273N140	273N78	04/22/01	Admitted
273N141	273N79	04/19/01	Admitted
273N142	273N80	04/16/01	Admitted
273N143	273N81	04/16/01	Admitted
273N144	273N82	04/15/01	Admitted
273N145	273N83	04/11/02	Admitted
273N146	273N84	04/10/01	Admitted
273N147	273N85	04/10/01	Admitted
273N148	273N86	04/09/01	Admitted
273N149	273N87	04/08/01	Admitted
273N150	273N88	04/04/01	Admitted
273N151	273N89	04/02/01	Admitted
273N152	273N90	Unknown	Admitted
273N153	273N91	03/31/01	Admitted
273N154	273N92	03/29/01	Admitted
273N155	273N93	03/26/01	Admitted
273N156	273N94	03/25/01	Admitted
273N157	273N95	03/23/01	Admitted
273N158	273N96	03/22/01	Admitted
273N159	273N97	03/20/01	Admitted
273N160	273N98	03/20/01	Admitted
273N161	273N99	03/20/01	Admitted
273N162	273N100	03/19/01	Admitted
273N163	273N101	03/19/01	Admitted
273N164	273N102	03/19/01	Admitted
273N165	273N103	03/19/01	Admitted
273N166	273N104	03/15/01	Admitted
273N167	273N105	03/13/01	Admitted
273N168	273N106	03/12/01	Admitted
273N169	273N107	03/11/01	Admitted
273N170	273N108	03/09/01	Admitted
273N171	273N109	03/06/01	Admitted
273N172	273N110	03/04/01	Admitted
273N173	273N111	03/03/01	Admitted
273N174	273N112	03/02/01	Admitted
273N175	273N113	02/27/01	Admitted
273N176	273N114	02/25/01	Admitted
273N177	273N115	02/20/01	Admitted
273N178	273N116	02/23/01	Admitted
273N179	273N117	02/22/01	Admitted
273N180	273N118	02/19/01	Admitted
273N181	273N119	02/16/01	Admitted
273N182	273N120	02/15/01	Admitted
273N183	273N121	Unknown	Admitted
273N184	273N122	02/13/01	Admitted
273N185	273N123	02/12/01	Admitted

xv

ound	No Objection
bandage	No Objection
to find the	No Objection

273N124	1.1	02/09/01	Admitted
273N125		02/07/01	Admitted
273N126		02/04/01	Admitted
273N127		02/01/01	Admitted
273N128		02/01/01	Admitted
273N129		01/26/01	Admitted
273N130		01/19/01	Admitted
273N131		01/17/01	Admitted
273N132		01/21/01	Admitted
273N133		01/16/01	Admitted
273N134		01/12/01	Admitted
273N135		01/05/01	Admitted
273N136		01/01/01	Admitted
273N137		12/27/00	Admitted
273N138		12/27/00	Admitted
273N139	Unknown		Admitted
273N140		12/11/00	Admitted
273N141	Unknown		Admitted
273N142	Unknown		Admitted
273N143		05/01/01	Admitted

xvi

(3) Pages	242	Left Hand - Wound	No Objection
	243	Front view w/ bandage	No Objection
	244	Side view Finger	No Objection
	245	Left Hand - wrist to finger tip	No Objection
	246	Left Hand Palm up	No Objection
	247	Back side of Hand	No Objection
	248	Both Hands	No Objection
	249	Head and Shoulders	Admitted over Obj
	250	Full body shot	Objection Sustained
	251	Handgun - .38 Taurus	No Objection
	252	Five (5) Live Rounds from Taurus	No Objection
	252A	Envelope Containing Test Fire Rounds	No Objection
	253	Right Eye glass Lens	No Objection
	254	Eye glasses Missing Right Lens	No Objection
	255	Cotton Swab - Front Door Hallway	No Objection
	256	Dry Wall Cut out w/ Bullet Hole	No Objection
	257	Bullet Recovered from Dry Wall	No Objection
	258	Cincinnati Red's Jacket - From Victim	No Objection
	259	Bullet Recovered from Clothing of Victim	No Objection
	260	Death Certificate	No Objection
	261	Coroner's Verdict	No Objection
	262	Autopsy Protocol - 11 pages	No Objection
	263	Microscopic Examination	No Objection
	264	Toxicology - 1 page Front and Back	No Objection
	264A	Radiology Report	No Objection
	265	Blood - Drawn from Robert Fingerhut	No Objection
	266	Bullet Recovered from Brain of Victim	No Objection
	267	Driver's Side Visor	No Objection
	268	Visor Clamp	No Objection
	269	Keys Recovered from Ignition	No Objection
	270	Bag Containing Letters	No Objection
	271	Letters from Donna to Nate (See attached)	No Objection
	272	No Exhibit	
	273	Letters from Nate to Donna (See Attached)	No Objection
	274	No Exhibit	
	275A	Hand Writing Analysis	Admitted over Obj
	275B	Hand Writing Analysis	Admitted over Obj
	276A	Hand Writing Standard	No Objection
	276B	Hand Writing Standard	No Objection
	276b1	CCA Records	No Objection
	276B2	CCA Records	No Objection
	276B3	CCA Records	No Objection
	276B4	CCA Records	No Objection
	276B5	CCA Records	No Objection
	276B6	CCA Records	No Objection
	276B7	CCA Records	No Objection
	276C	Hand Writing Standard	No Objection
	276C1	Prison Records	No Objection
	276C2	Prison Records	No Objection
	276C3	Prison Records	No Objection
	276C4	Prison Records	No Objection
	277	01-35755- Two (2) pages	No Objection
	278	01-35755-A	No Objection
	279	01-35755-B	No Objection
	280	01-35755-C	No Objection
	281	01-35755-D	Admitted over Obj
	282A	01-35755 - Mike Roberts (2) Pages	No Objection
	282B		Not Introduced
	282C	01-35755 - Mike Roberts Supplemental	No Objection
	283	01-35755 - Cindy Mavlee (2) Pages	No Objection
	284	Dale Laux - (2) Pages	No Objection
	285	Sieve Green (1) Page	Admitted over Obj

xvii

286A	Brenda Gerardi (3) Pages	No Objection
286B		Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photographic Line -Up Jose Flores	No Objection
314	Evevlooe Continaing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photographic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Enevelope Continaing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Phot	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

xviii

323	\$300,000 - State Farm Insurance Policy 17 pages	Admitted over Obj
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 38 Pages	No Objection
327A	Certification - ATF - 1page	Admitted over Obj
327B	Taurus IL46854 - 2 pages	Admitted over Obj
327C	Taurus JH14188 - 1 page	Admitted over Obj
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	No Objection
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
349	Photographic Line-Up - Frank Reynolds	Not Introduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Enevelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Enevelope Containing 2 Photos	No Objection

xix

395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft.'s Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1 Orientation Instructions		
Court Exhibit 2 Exhibit List		
Court Exhibit 3 Brief In Opposition to Acquittal		
Court Exhibit 4 Jury Charge		
Court Exhibit 5 Corrected Instruction		
Court Exhibit 6 Jury Question		
Court Exhibit 7 Penalty Instruction		

xx

3023

1 CONTINUING WITH EXAMINATION OF CHRIS MONYAK:

2 CROSS EXAMINATION BY MR. LEWIS:

3 Q. What was the last name, Chris?

4 A. Monyak.

5 Q. How about if I call you Chris?

6 A. That is fine.

7 Q. Chris, how long have you been employed by the
8 Department of Corrections?

9 A. The Ohio Department of Corrections, I have
10 been employed since 1988.

11 Q. And how long have you been employed as a
12 security officer, the whole time?

13 A. Started out as a correctional officer and
14 moved up through the ranks, yes.

15 Q. And basically, the correctional officer, what
16 were your general duties as corrections
17 officer, very briefly?

18 A. Normally, just supervise the inmates that are
19 assigned to your areas.

20 Q. You are a guard?

21 A. Yes.

22 Q. And when was it that you moved up to security?

3024

1 A. In 1995, I became institutional inspector and
2 then in 1996, I became the institutional
3 investigator.

4 Q. And institutional investigator, what
5 specifically are your duties? The
6 government, they have got all of these
7 sheets and you have got these duties?

8 A. Right. Yes, I

9 Q. Do you remember what the duties are?

10 A. My main duties are to conduct administrative
11 investigations and that deals with both
12 staff members of the institution and the
13 inmates that are assigned to that
14 institution.

15 Q. Maybe like complaints, between the corrections
16 officers and the inmates, you investigate
17 that?

18 A. In some instances, yes.

19 Q. Would you investigate anything between inmate
20 and inmate?

21 A. Assaults or fights, yes.

22 Q. Are there any other investigative or security

3025

1 officers at Lorain?

2 A. There's a State Trooper that is assigned to
3 the institution, but as far as
4 investigators, there's only one.

5 Q. You are the one and only security man since
6 1996?

7 A. Investigator, yes.

8 Q. And in regard to this recording system, I
9 assume, to start off with, that was
10 installed by MCI, right?

11 A. Correct.

12 Q. It was functioning?

13 A. Yes.

14 Q. That was installed in what year, do you
15 recall?

16 A. System that this recorded was installed I
17 believe in 1999.

18 Q. And the way they have it set up, if I
19 understand this correctly, is that
20 there's phones -- well, let me ask you
21 this. Can you only make collect calls?

22 A. Only collect calls, that is correct.

3026

1 Q. And MCI, those are pretty expensive calls?

2 A. Depending on the duration and if it is an out
3 of state call, it can be pretty
4 expensive.

5 Q. So, it is only collect calls, right?

6 A. Correct.

7 Q. And how many phones are in Lorain Correctional
8 facility that can be utilized by inmates
9 for these collect calls?

10 A. 57 phones all together.

11 Q. And those are broken down into various places
12 or units, if it is in a building A,
13 building B, C, D, that kind of thing?

14 A. Correct.

15 Q. How many buildings are we looking at or how
16 many blocks of phones?

17 A. There's probably about 12 different areas that
18 have phones and most of the areas, there
19 are four phones.

20 Q. Four times 12 is what, 48?

21 A. Right.

22 Q. So, you have got 12 areas, four in each one.

3027

1 Each one of those phones would record
2 first, I think my understanding is that
3 any inmate that uses that phone
4 regardless of what building they were
5 from, when they use the phone, they put
6 in the numerical number. It is an pin
7 number and D.O.B?

8 A. Right.

9 Q. If I am [REDACTED], do they put [REDACTED], that
10 would be five digit or six digit?

11 A. All of the numbers, there's a number that
12 starts a sequence and it designates that
13 it is a male inmate. That is the number
14 2. They have separate numbers for male
15 inmates, female inmates and reformatory
16 numbers.

17 Q. I thought Lorain was only for males?

18 A. It is, but I am talking system wide.

19 Q. So you have got one digit for male or female?

20 A. Correct. Digit for male inmates is a digit
21 number 2. So all pin numbers will start
22 with the number 2.

3028

1 Q. Are women number one?

2 A. Actually women are number nine. You will see

3 letters on the numbers, a male inmate

4 number always starts with the letter A,

5 and designates A is on the number 2 on

6 the phone. Women starts with a W, so it

7 indicates the number nine. And then we

8 also have reformatory numbers, which are

9 designated with the number seven and that

10 corresponds with the letters that are on

11 the key pad of the phone.

12 Q. Now, the first digit takes care of that, then

13 what number goes in?

14 A. You have the six digit inmate number.

15 Q. Okay. And they are assigned that as soon as

16 they arrive at the institution?

17 A. Correct.

18 Q. Is it their actual prison number or anything

19 of that nature?

20 A. It is the prison number.

21 Q. And then I'm going to assume the last is the

22 D.O.B?

3029

1 A. The last four numbers are the month and day.

2 Q. And do you have any surveillance video of the
3 location where the phone calls are made?

4 Do you make a surveillance?

5 A. There's only one area of the prison that has a
6 camera in the phone area and that is in
7 the segregation unit. All of the normal
8 housing units do not have cameras in that
9 area.

10 Q. The point I'm getting to, is that somebody
11 else technically could actually make a
12 phone call and use somebody else's pin?
13 A. Yes. As I stated earlier, there's nothing to
14 prevent any inmate from going up and
15 entering anybody's pin number.

16 Q. And Mr. Jackson did a search and you could
17 search by a number called. You can
18 search by pin number, you can search by
19 building?

20 A. Correct.

21 Q. Are there any other searches you can run?

22 A. You can search by not only building, there's

3030

1 four phones in the building, you can
2 search down to a specific phone. You can
3 narrow it down to duration. I may be
4 searching for phone calls that are two
5 minutes or less or ten minutes or more.
6 Just about every field that is shown on
7 that report, you can search by that
8 field.

9 Q. That was the total number of phone calls made
10 by Mr. Jackson for what period of time
11 are we talking?

12 A. Are you referring to the Exhibit?

13 Q. Yes. Did they ask you to go back and go to a
14 certain time or to go back when he
15 arrived?

16 A. What I did when I was first given his number,
17 I determined how long he was at the
18 institution, and so I searched for his
19 entire incarceration, which was October
20 through December.

21 Q. Do we have on this CD, do we have all phone
22 calls for his entire time he was there

3031

1. where he actually spoke on the phone?

2. A. Yes.

3. Q. We have all of them?

4. A. Yes.

5. Q. All of the rest of these are denied, things of
6. that nature, correct?

7. A. Correct. That lists 18 phone calls, there
8. were actually 19. There was one recorded
9. on here that is not on that report.

10. Q. You indicated also, there's no way -- you
11. can't pick up on an extension, if
12. somebody is listening on the other end of
13. an extension if you have got 15
14. extensions and you are on one. Fourteen
15. people could be on the other end and you
16. wouldn't know it?

17. A. Correct.

18. Q. So you have got a total of 19 phone calls,
19. right?

20. A. Correct.

21. Q. And you indicated that if there's -- well, if
22. there's a three way call, that is

3032

1 detected. Once that call goes to a
2 certain number and it is going to be
3 transferred out to another number, then a
4 warning system comes up or something?

5 A. Basically, what the system listens for are
6 tones or rings. A lot of times when
7 somebody makes a three way phone call,
8 they will click off, and then dial the
9 second number, and then they will click
10 back on. If the inmate can hear that
11 ringing in the phone, that means that the
12 system can also hear that ringing, and
13 that is what the system detects. It
14 really didn't take that long for the
15 inmates to realize that if they told the
16 person that was making the three way call
17 to not click back over until you have
18 already been connected, then the system
19 would not detect any tone or any ringing
20 sound and it wouldn't flag as a three way
21 phone call.

22 Q. What I am getting to, you said the system had

3033

1 three choices in regard to that kind of
2 thing?

3 A. Correct.

4 Q. Is this a mechanized choice? Is the machine
5 doing it itself or is someone monitoring
6 this?

7 A. It is set from the manufacturer or MCI to
8 disconnect all three way phone calls.
9 The operator of the system does have the
10 capability of changing that setting, but
11 I have not changed it.

12 Q. Okay, so the three choices, but it was preset
13 to disconnect and it would disconnect?

14 A. Yes.

15 Q. Do you as security officer or anybody else
16 listen to these phone calls on a daily
17 basis?

18 A. I do some daily monitoring of phone calls,
19 although most of my time is taken up with
20 usually I am looking at specific inmates
21 for illegal activity and I'll monitor
22 their phone calls. As far as randomly

3034

1 monitoring phone calls, I would say that
2 probably happens two to three hours a
3 week and that is done by me.

4 Q. The system is in place to do exactly what
5 besides -- what is the system in place
6 for, to monitor everybody's phone calls?

7 A. What is the reason?

8 A. We have a problem within the facility of drugs
9 being conveyed into the facility, and a
10 lot of that information to try to curtail
11 that, can be obtained off the phone
12 calls. And we have some harassing phone
13 calls that originate from the facilities
14 and that also catches that.

15 Q. Do you have any idea whether any of these
16 phone calls were listened to at the time
17 they were made or after the time they
18 were made and when they were recorded?

19 A. I know that after I was notified of the -- by
20 Trooper Funelli to pull up these phone
21 calls, I monitored them at that time. If
22 they were monitored prior to that, I

3035

1 can't recall. It would have been myself
2 that would have monitored it, but I
3 listened to thousands of phone calls over
4 the months. To say a specific phone call
5 was monitored, I can't say that.

6 Q. The system is in place in order to stop any
7 illegal activity, drugs coming in and
8 drugs coming out. Everybody talking
9 about bad things, and yet if nobody
10 listens to it, it is not really going to
11 prevent anything. After the fact, it may
12 be helpful in some form or fashion.

13 A. Not necessarily. I may get information that a
14 certain inmate is having drugs come in.
15 I can go back and listen to his previous
16 conversations and if it is mentioned then
17 that would kind of verify that and it
18 would give me the avenue to continue.

19 Q. I understand that. If you don't have a lead
20 or somebody go to that phone call or to
21 watch that person or plug in their pin
22 number and do it, then things can slip

3036

1 by, correct?

2 A. Correct.

3 Q. How many different -- did you search, you
4 searched by pin. You searched by
5 building. Did you do all of the searches
6 in order to find these calls?

7 A. Initially I searched by the pin number and
8 then subsequently, I searched by the
9 destination number and that is where I
10 was able to come up with the 19th call.

11 Q. Did you search by any other criteria?

12 A. No.

13 Q. So, these may not be the only phone calls
14 we're talking about?

15 A. If they were either made to that destination
16 or using that pin number, these are all
17 of the phone calls. If a phone call was
18 made from a different housing unit,
19 either using that pin number or calling
20 that destination, it would have come up
21 in this report.

22 Q. So, actually, it wouldn't be super difficult

3037

1 for any of the inmates just to switch

2 THE COURT: The answer is or to use somebody else's pin and

3 their date of birth. Seems kind of easy?

4 A. It wouldn't be difficult.

5 MR. LEWIS: Thank you very much.

6 MR. MORROW: No further questions.

7 REDIRECT EXAMINATION BY MR. MORROW:

8 Q. Do you know approximately how long the phone

9 calls were that Mr. Jackson made?

10 A. The system is set up to automatically

11 disconnect after ten minutes. The vast

12 majority of his phone calls lasted ten

13 minutes.

14 Q. How many calls are made out of the institution

15 on a daily basis?

16 A. Four thousand calls a day that are attempted.

17 Q. Prior to speaking with Trooper Funelli, did

18 you have any information that Mr. Jackson

19 had been involved in any criminal

20 activity that would warrant monitoring?

21 A. No.

22 MR. CONSOLDANE: I'm going to

3038

1 object. This is not proper redirect.

2 THE COURT: The answer is no. If it
3 was yes -- overruled.

4 Q. The answer is no?

5 A. The answer is no.

6 MR. MORROW: Nothing further.

7 MR. LEWIS: Nothing further.

8 THE COURT: Thank you. You are
9 excused.

10 TROOPER GERALD FUNELLI

11 being duly sworn according to law, on his oath,
12 testified as follows:

13 DIRECT EXAMINATION BY MR. MORROW:

14 Q. Could you please introduce yourself to the
15 ladies and gentlemen?

16 A. My name is Gerald Funelli. I am employed with
17 the Ohio State Highway Patrol. I have
18 been employed as a trooper since 1978.

19 Q. And what is your current position?

20 A. I am currently assigned to the office of
21 investigative services.

22 Q. And in that what, do you assist other

3039

1 departments in investigations?

2 A. Yes. That is my opinion.

3 Q. Did there come a time when your assistance was
4 requested by the Howland Township Police
5 Department to investigate a homicide in
6 Howland Township?

7 A. Yes, Sir.

8 Q. And in particular, did they request assistance
9 in reference to a man by the name of
10 Nathaniel Jackson?

11 A. Yes, Sir.

12 Q. What did they request of you to do with
13 respect to -- with respect to
14 Mr. Jackson?

15 A. Mr. Jackson was an inmate in the Ohio State
16 correctional system. He was an inmate at
17 Lorain Correctional. I was requested to
18 obtain some information regarding
19 Mr. Jackson's housing and also phone
20 calls that were made from the institution
21 by Mr. Jackson.

22 Q. And did you then do that?

3040

1 A. Yes, Sir.

2 Q. And from whom did you request that information
3 with respect to the phone calls?

4 A. I contacted first, our district three
5 investigator, and he in turn turned me
6 over to talk to the institutional
7 investigator there, Chris Monyak.

8 Q. And did you provide Mr. Monyak with any
9 information?

10 A. Yes, I did.

11 Q. What information did you provide to him?

12 A. There was a list of five phone numbers that
13 were given to me to check. Mr. Jackson's
14 name, and the time span in which we
15 wanted to check the phone calls.

16 Q. And were you given any identification
17 information with respect to Mr. Jackson?
18 Were you provided with a date of birth,
19 Social Security number?

20 A. Yes.

21 Q. Did you give that information to Mr. Monyak as
22 well?

3041

1 A. Yes.

2 Q. And at some point in time did Mr. Monyak

3 return any material to you?

4 A. Yes, he did. When I first was requested to

5 assist in this, it was December 14,

6 Friday, and the following Tuesday was

7 when I obtained a copy of the disk of the

8 conversations that Mr. Jackson made.

9 Q. I'm going to hand you what has been marked

10 State's Exhibit 261. Do you recognize

11 that?

12 A. Yes.

13 Q. And could you tell the ladies and gentlemen

14 what that is, please?

15 A. This is the CD of the conversations that were

16 provided by the investigator, Chris

17 Monyak to me, phone calls that

18 Mr. Jackson made.

19 Q. If you take a look at State's Exhibit 360, do

20 you recognize that?

21 A. Yes. That is basically the log of the phone

22 calls that Mr. Jackson made out of the

3042

1 institution to the numbers that are
2 listed on here.

3 Q. And was that provided to you?

4 A. Yes, it was.

5 Q. Finally, let me show you what has been marked
6 as State's Exhibits 276-C, it is C-1
7 through 4 along with the envelope. Can
8 you take a look at those, please?

9 A. Yes.

10 Q. Are you able to identify those?

11 A. These are the intake form that I obtained from
12 the institution, special services
13 department inmate employee history, and a
14 food packages list, two of them that were
15 obtained from the institution. I
16 obtained them from the warden on 4-16-02
17 at 1020 hours.

18 Q. And what did you do with those documents?

19 A. I hand delivered them to Howland Police
20 Department.

21 Q. Now, after you received a copy of that, after
22 you received that CD, what if anything

3043

1 did you do with it?

2 A. I turned it over the same day I received it to
3 Detective Monroe in the Prosecutor's
4 office.

5 Q. I guess my question is, did there come a point
6 in time when you listened to that CD?

7 A. Yes, I did.

8 Q. And how many phone calls were on that CD?

9 A. 19.

10 Q. And do you recall approximately how long those
11 different phone calls were?

12 A. They were all ten minutes which is the length
13 of time that the phones, that they are
14 allowed on the phone, except for one call
15 that was cut short and that was due to
16 trying to make a three way call.

17 Q. I'm going to hand you what has been marked as
18 State's Exhibits 362 through and
19 including State's Exhibit 380. Can you
20 tell me what those are, please?

21 A. These are audio cassettes that were given to
22 me, which are the copies of the phone

3044

1 conversations that were made by
2 Mr. Jackson at Lorain Correctional
3 facility.

4 Q. Did you listen to each of those audio
5 cassettes?

6 A. Yes, I did.

7 Q. Did you compare them to the originals on the
8 audio CD?

9 A. Yes, I did, along with the transcripts.

10 Q. Along with the transcripts?

11 A. Yes.

12 Q. Are audio tapes true and accurate copies of
13 each of the separate phone calls on the
14 audio CD?

15 A. Yes, they are.

16 Q. And is there any way that you have indicated
17 on those tapes that you reviewed them?

18 A. Yes, on the top right hand corner, I put a
19 little check mark on each one that I
20 listened to, which is all of them.

21 Q. All 19 phone calls?

22 A. Yes, Sir.

3045

1 Q. I am also going to hand you what has been
2 marked as State's Exhibits 362-A, 363-A
3 through and including 380-A, each of the
4 Exhibits with the A designation. Can you
5 take a look at those, please?

6 A. Yes.

7 Q. Are you able to identify those?

8 A. Yes. They are the transcriptions of the phone
9 conversations that were made on, whatever
10 days is on the top of the transcripts.
11 They are phone conversations of
12 Mr. Jackson.

13 Q. That is the transcript of each of the audio
14 tapes?

15 A. Yes.

16 Q. And did you compare those transcripts against
17 the audio tapes?

18 A. Yes, I did.

19 Q. And are those transcripts substantially
20 correct with respect to the audio tapes?

21 A. Yes, they are.

22 Q. And is there any kind of identification system

3046

1 that exists on the top of the transcripts
2 so that they can be cross referenced with
3 the audio tapes and the CD's to the best
4 of your knowledge?

5 A. Yes, there's some of them, starts off like A,
6 B, numbers, C numbers, which indicates
7 the phone call, and also next to it is
8 the date of which the phone call is made,
9 and correlates to the cassette tape, and
10 if you open up the CD, it also shows you
11 the same numbers which correlate to the
12 phone call and the transcripts.

13 Q. When did those phone calls commence? What is
14 the first transcript date?

15 A. October 5, 2001 and the last one is December
16 8, 2001.

17 MR. MORROW: No further questions.

18 CROSS EXAMINATION BY MR. LEWIS:

19 Q. Gerry, we have been doing this a long time,
20 haven't we?

21 A. Yes, Sir.

22 Q. They have prepared or you have gone over what

3047

1 was on the CD, which is 361. That became

2 the audio cassettes. You reviewed those,

3 matches this, right?

4 A. Yes, Sir.

5 Q. And the transcripts were made up from these,

6 correct?

7 A. I followed the transcripts with the CD's and

8 then I followed them with the cassettes.

9 Q. It worked out, they were all the same?

10 A. Yes, Sir.

11 Q. And the first conversation you had, you

12 indicated that the first transcript, the

13 first call was back on October 5, 2001?

14 A. Yes, Sir.

15 Q. You checked with Chris at the Lorain

16 Correctional facility. Well, are you

17 assigned to Lorain?

18 A. No, Sir.

19 Q. You indicated there was one officer, Highway

20 Patrol officer, that was assigned -- that

21 was assigned to each prison along with a

22 security officer?

3048

1 A. We have a trooper assigned to each
2 institution. Lorain falls within
3 district three. Trooper Weber is the
4 trooper that handles that.

5 Q. Because you are in this district, that is how
6 you got involved?

7 A. Yes, Sir.

8 MR. LEWIS: Thank you very much.

9 MR. MORROW: Nothing further.

10 THE COURT: Thank you.

11 MR. WATKINS: We would request a
12 brief recess to set up.

13 THE COURT: Let's take ten minutes.
14 You are not discuss anything or form any opinions
15 until you return.

16 (Court in recess at 2:45 p.m.)

17 (Resumed in Open Court at 3:05 p.m.)

18 THE COURT: The State ready to
19 proceed?

20 MR. WATKINS: We'll call Paul
21 Monroe.

22 THE COURT: For the record, this

3049

1 witness has been has been previously sworn.

2

3

DET. SGT. PAUL MONROE

4

having been previously sworn, testified as follows:

5

REDIRECT EXAMINATION BY MR. WATKINS:

6

Q. Paul, you previously testified, and I want to

7

cover a couple of things that we didn't

8

get to. When you took the statement from

9

the Defendant, he indicated in that

10

statement that he had thrown a gun out of

11

the car on his way back to Youngstown?

12

A. Yes.

13

MR. CONSOLDANE: I'm going to

14

object. This is redirect. That was not covered on

15

cross. He has no right to go back into that on

16

redirect.

17

MR. WATKINS: I'm asking him.

18

THE COURT: The State has not closed

19

yet.

20

MR. CONSOLDANE: It doesn't matter.

21

He has testified. We have cross examined him.

22

He's calling him on redirect. He can't go into

3050

1 something on redirect that we did not get into on
2 cross examination.

3 (At Side Bar with Reporter present.)

4 THE COURT: We're at Side Bar
5 outside of the hearing of the Jury. Defendant's
6 presence waived?

7 MR. CONSOLDANE: Yes.

8 THE COURT: You are objecting to
9 what specifically?

10 MR. CONSOLDANE: Paul Monroe has
11 been called already on direct examination by the
12 State. He has testified. He has been cross
13 examined by the Defense. During the cross
14 examination, we did not bring anything up about the
15 gun, or anything about how he threw it or about the
16 Wal-Mart tape. Now the State is trying to call,
17 has called Paul Monroe on redirect, and getting
18 into areas that we never touched on cross
19 examination, which is clearly improper.

20 MR. WATKINS: First off, I asked
21 leave to recall him when he left the stand. I
22 never curtailed what I would recall him for.

3051

1 Secondly, the law clearly allows the Court to allow
2 leave to ask these questions, so I'm saying on both
3 bases --

4 THE COURT: There's a third basis,
5 too, that it appears to the Court the State if
6 required to, could bring in the FFL dealer to show
7 that the gun was purchased, so the same evidence is
8 going to come in. It seems to be needless to delay
9 the trial and for the State --

10 MR. CONSOLDANE: He's not getting
11 into who purchased the gun. He's getting into the
12 fact about him throwing the gun out the window.
13 The search for the gun.

14 MR. WATKINS: That is correct.

15 MR. CONSOLDANE: Not about who
16 bought the gun.

17 MR. WATKINS: I never released this
18 witness as a matter of record.

19 THE COURT: I'm going to overrule
20 the Defense's objection and allow the testimony to
21 come in. I don't think that this is -- I think
22 that the State has a right to supplement and they

3052

1 did reserve the right to call. Monroe is their
2 primary witness.

3 MR. CONSOLDANE: He's been sitting
4 there listening to everything.

5 THE COURT: I think if this
6 testimony was in contradiction of something else,
7 but it isn't. The record is complete.

8 MR. LEWIS: One additional thing
9 we're going to object to the prior point on a
10 selective basis. What they have done is they have
11 the CD rom which has all of the conversations they
12 are talking about. They have reproduced audio
13 cassettes, which reproduced all of the
14 conversations and they also have transcripts of all
15 of the conversations, the 19 conversations that
16 were produced. There's three different forms.
17 They are all available to the Jury. What they have
18 selectively done is created the power point. The
19 screen is about ten feet by 14 feet in proportions.

20 THE COURT: I think your figure is
21 excessive, but go on. It is a big screen.

22 MR. LEWIS: It takes up the whole

3053

1 side of the room here. In any event, that is
2 selected. Now if we ask for portions to be shown
3 on the screen, it can't be done. They just did it
4 for them. We can't even get into it. In fact, I
5 have to have somebody read -- I was going to ask
6 that the Prosecutor, after he finishes Mr. Monroe,
7 that one of the Prosecutors can take the stand and
8 read some of the transcripts I want read, if
9 nothing else. I'm objecting to the power point in
10 that form and fashion, because we're deprived from
11 using that and we don't have a power point to use.
12 We don't have it financially. We don't have access
13 to it. We don't have access to it. They can
14 produce their own case and their selected portions
15 the way they want to present it. We're financially
16 unable to do that.

17 MR. WATKINS: I think that they have
18 every right to present their case. They have had
19 the tapes. They have had the transcripts. They
20 could ask questions. Obviously the Prosecutor is
21 not going to get on and read, if he wants
22 Mr. Consoldane to read whatever he wants. He has a

3054

1 right in his own way to present his own case.

2 We're allowed to present our case.

3 THE COURT: I think this raises an
4 interesting argument, but it is beyond my kin to be
5 able to understand what the correct answer is. The
6 Defense is asserting that they do not have the
7 wherewithal to come to combat in that similar form,
8 that is the Defense, through the Public Defender's
9 office, do not have the money to present their own
10 power point. They do have access to the same
11 material. It is just the difference of format.
12 The suspicion of the Defense is that the power
13 point is something of the nature that people from
14 watching T.V., have the visual, will be more even
15 influenced by the State's presentation. That is
16 something for greater minds than mine to figure
17 out, whether that is a violation of due process and
18 fairness of the trial. Personally, I would like to
19 see it otherwise, but I know of no practical or
20 possible way that that could be accomplished. I
21 think the Defense has two very abled lawyers. They
22 have the material that they can deal with, and I'm

3055

1 sure they will deal with it in the proper fashion.
2 Your objection is noted. I guess your motion goes
3 to the affect this should not be permitted. That
4 is overruled.

5 (End of Side Bar discussion.)

6 Q. (By Mr. Watkins) Detective Monroe, would you
7 continue and tell the Jury whether or not
8 you conducted a search for a weapon as to
9 the area that was given by the Defendant
10 on the way back to Youngstown?

11 A. Mr. Jackson indicated to me that on the early
12 morning hours of December 21 when we
13 interviewed him, that shortly after the
14 crime he got on the freeway and headed
15 back towards Youngstown. That he
16 discarded the firearm that was used in
17 this crime along the right hand side of
18 the road by throwing the gun out through
19 the passenger window. On that same day,
20 later that morning, or late afternoon, we
21 were able to amass 22 policemen and we
22 walked the berm area, and then there's a

3056

1 fence that runs along State Route 82,
2 which separates the private property area
3 with property owned by the State. The
4 men all walked shoulder to shoulder
5 through that entire length of highway out
6 to Route 11. We did not find anything.
7 The following day, myself and Patrolman
8 Jeff Urso from the Howland Police
9 Department, went back to the same area,
10 we researched that area and continued to
11 search along Interstate or Route 11, out
12 to Tibbetts-Wick Road. We also checked
13 the center of the road between the lanes
14 and we didn't find anything during that
15 search.

16 Q. Now, when you testified previously, you
17 described a Wal-Mart receipt that you had
18 identified as belonging to Donna Roberts
19 on the kitchen table?

20 A. Yes.

21 Q. And you collected that and what number is on
22 that Exhibit?

3057

1 A. Exhibit No. 396.

2 Q. And you collected that Exhibit?

3 A. Yes, I did.

4 Q. And what time was that Exhibit, the receipt
5 for Wal-Mart?

6 A. It is dated December 11, 2001, the time of the
7 purchase is 2137 or 9:37 p.m.

8 Q. How much time would it take, if you know, to
9 drive from the Roberts' residence to the
10 Wal-Mart store on that receipt?

11 A. Anywhere from five to ten minutes, you can
12 drive from 254 Fonderlac to Wal-Mart on
13 Elm Road.

14 Q. Would you tell the Jury where the Wal-Mart
15 store is located?

16 A. What they refer to as 82 bypass, which runs
17 between East Market Street and Elm Road,
18 and get off on the Elm Road exit. It is
19 literally right there at that
20 intersection at Elm Road and the bypass.

21 Q. If one were proceeding east, or west on East
22 Market or Old 82, you would go past Giant

3058

1 Eagle before you got to that exit to go
2 onto the bypass?

3 A. Yes.

4 Q. How far past Giant Eagle is that exit to go
5 towards the Wal-Mart store approximately?

6 A. Half mile.

7 Q. Now, Paul, did you give telephone numbers to
8 the Highway Patrol, in particular Gerry
9 Funelli, that were relevant to your
10 investigation when they went to the
11 Lorain Correctional Institute, to check
12 in to digital phone recordings?

13 A. Yes, I did.

14 Q. And did you give the number [REDACTED]

15 A. Yes, I did.

16 Q. And would you tell the Jury whose number that
17 is, if you know?

18 MR. LEWIS: Objection. It is not a
19 telephone company.

20 MR. WATKINS: I think he can testify
21 to the numbers he knows.

22 THE COURT: I believe there's

3059

1 evidence in the case that establishes that is the
2 phone number. I'll overrule your objection.

3 Q. Whose telephone number?

4 A. During the course of the investigation, I was
5 able to determine the phone number area
6 code [REDACTED] comes back to Donna

7 Roberts.

8 Q. Did you have any occasion to call in a number
9 and talk to Donna Roberts at that number?

10 A. Yes, I have.

11 Q. And would you tell the Jury the date of birth
12 of the Defendant?

13 A. [REDACTED].

14 Q. Now, subsequent to receiving, you in fact
15 received recordings or a CD from Lorain
16 Correctional Institute?

17 A. Yes, I did. From Trooper Gerry Funelli.

18 Q. And did you go and listen to all of those
19 recordings?

20 A. Yes, I did.

21 Q. And did you have an occasion to recently
22 listen to excerpts from the recordings?

3060

1 A. Yes, I have.

2 Q. I'm going to hand you what has been marked as
3 State's Exhibit 397. Are you able to
4 identify that cassette tape?

5 A. State's Exhibit 397 is a voice recording of
6 Nathaniel Jackson and Donna Marie
7 Roberts. It is a condensed version of
8 some of the telephone calls that were
9 recorded.

10 Q. And how many different recordings are found on
11 that condensed version?

12 A. There's six recordings on this tape.

13 Q. Approximately how long is that tape?

14 A. Approximately 36 minutes.

15 Q. And is that tape an accurate reproduction of
16 the tapes that you listened to, or the CD
17 that you listened to that was received in
18 this case.

19 MR. CONSOLDANE: I object. It is
20 not an accurate reproduction. He can rephrase the
21 question.

22 THE COURT: Are you asking him if

3061

1 this tape is an accurate representation?

2 MR. WATKINS: It is an accurate
3 reproduction of the excerpt of all of the tapes.

4 MR. CONSOLDANE: Okay.

5 THE COURT: You have listened to
6 them all and reviewed the excerpts?

7 THE WITNESS: Yes, I have.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. And did you have an occasion to read over the
11 transcript of the recordings, which is
12 number 397?

13 A. Yes, I have.

14 Q. And is that transcript a reproduction that is
15 accurate, of the tape?

16 A. Yes, it is.

17 Q. And in your investigation did you spend
18 sufficient time with Donna Roberts and
19 Nathaniel Jackson, to recognize their
20 voices in your opinion?

21 A. Yes, I have.

22 Q. And from listening to the tapes, including

3062

1 397, do you recognize the voice of

2 Nathaniel Jackson on the tape?

3 A. Yes, I do. The voice on this tape is

4 Nathaniel Jackson's.

5 Q. Do you recognize a female voice that is on the
6 tape?

7 A. Yes, I do.

8 Q. And whose voice is it?

9 A. The female voice that is on this tape is Donna
10 Marie Roberts.

11 Q. And how many hours did you spend talking to
12 Donna Marie Roberts?

13 A. I would say Donna Roberts, I spent more than
14 six hours with her.

15 Q. And to your knowledge, is there any other
16 voice on the tape recording that you have
17 identified on 397?

18 A. There's a digital voice that comes on during
19 portions of this tape that indicates that
20 the tape is being monitored and recorded.

21 As far as someone's voice, my

22 understanding is that it is a digital

3063

1 voice made by MCI notifying the persons
2 power involved in the conversation, that the
3 conversation that they are about to have
4 or they are having, may be monitored and
5 it is being recorded.

6 Q. But other than that, the two voices are the
7 Defendant, Nathaniel Jackson and Donna
8 Marie Roberts?

9 A. Yes, Sir.

10 MR. WATKINS: We would like to play
11 the tape at this point, with a transcript that is
12 on the tape.

13 MR. CONSOLDANE: Note our objection.

14 THE COURT: Your objection is on the
15 record.

16 (State's Exhibit 397, an audio cassette, played
17 for the Jury at this time.)

18 MR. WATKINS: We have no further
19 questions.

20 RECROSS EXAMINATION BY MR. LEWIS:

21 Q. Paul, if I were to ask you to come over here
22 and play some of the other conversations

3064

1 or whatever, would you be able to do that
2 for me on this power point?

3 A. From that tape?

4 Q. Yes.

5 A. Just excerpts from the six recordings that are
6 on that tape?

7 Q. It is what these two gentlemen picked out, out
8 of the tapes?

9 A. We picked those out together.

10 Q. Did you help them?

11 A. Yes, Sir.

12 Q. I don't think you picked out anything that was
13 too good for Nathaniel, right?

14 A. There were some things that probably weren't
15 appropriate for the Courtroom.

16 Q. Well, we have got a grown up Jury here and
17 they are going to see it all anyhow, all
18 of the letters there are and they are
19 going to hear all of the tapes. And I
20 suppose we got a case involving the
21 death, so I guess that is the way it is
22 going to be. We're all grownups.

3065

1 A. Yes.

2 Q. Mr. Watkins got you back up here and asking
3 you about a gun. There were some other
4 things you had a chance -- you
5 inventoried the car that belonged to
6 Donna Roberts, but Robert Fingerhut was
7 driving, correct?

8 A. Which car?

9 Q. That would be the silver one?

10 A. Yes.

11 Q. They are both Donna's cars, it is just
12 Mr. Fingerhut was operating it, right, as
13 far as you know?

14 A. They are both leased and they are both in her
15 name.

16 Q. That is right. And the point being, is you
17 had a chance to inventory what was in the
18 Chrysler, is that correct?

19 A. Yes, Sir.

20 Q. You also had an opportunity at the morgue to
21 collect items that were on the body of
22 Mr. Fingerhut, correct?

3066

1 A. I wasn't at the morgue, Sir.

2 Q. Come a time where you came into possession of
3 items that were on him, say for instance,
4 he carried two wallets?

5 A. Yes, he did.

6 Q. Which was good enough to give a backache, but
7 he carried two wallets, and did you have
8 a chance to go through the contents of
9 those wallets?

10 A. Yes, I did.

11 Q. Did you also have an occasion to indicate or
12 to have Mr. Watkins, or Mr. Morrow to
13 your knowledge, did they go through the
14 wallets? Do you know offhand?

15 A. I don't know if they went through them.

16 Q. And in those wallets, did you find so-called
17 identification cards?

18 A. Yes.

19 Q. For Mr. Fingerhut. Did you find a card in
20 there that indicated the fact that
21 Mr. Fingerhut was supposedly a special
22 agent for the Department of Justice?

3067

1 A. I think it was United States Marshal Service.

2 Q. It was issued by the United States Marshal
3 Service?

4 A. Yes.

5 Q. And did you have an occasion to indicate that
6 to Mr. Watkins or did you have an
7 occasion to check that out, it seems
8 rather important in some way?

9 A. I don't understand the importance.

10 MR. WATKINS: I'm going to object on
11 relevancy. I object on relevancy.

12 MR. LEWIS: He put Mr. Monroe back
13 up here.

14 THE COURT: I'm going to overrule
15 the objection to his last question. Did you follow
16 that at all?

17 A. No, I did not.

18 Q. So, did you have any curiosity about it?

19 A. Not really.

20 Q. He also had a badge in there from supposedly
21 the State's Attorney's office in Florida.
22 Did you ever check that out?

3068

1 A. No, Sir.

2 Q. You don't really know, was it bogus or you
3 don't know anything about them?

4 A. I was investigating Mr. Jackson, not
5 Mr. Fingerhut.

6 Q. You're right. And I assume that the
7 Prosecutor's office, they had no -- or
8 they didn't care to look into it either?

9 A. I was in charge of the investigation.

10 Q. The Wal-Mart receipt that you looked at, that
11 was State's Exhibit 396? It doesn't give
12 a name or anything else on this. Was a
13 credit card used?

14 A. Cash.

15 Q. It doesn't give a name, so in essence, you
16 really don't know who was at the Wal-Mart
17 store or do you?

18 A. I was told by Donna Roberts that this was --
19 when she was asked about the bags on the
20 table. That is where it came from.

21 Q. But that is just what she said?

22 A. That is what she said.

3069

1 Q. You have had a chance to go through -- let's
2 talk a little bit about the letters and
3 conversations on the tapes. I'm just
4 going to ask you, you did read them,
5 correct?

6 A. Yes, Sir.

7 Q. And of course, you listened to the tapes,
8 right?

9 A. Yes, I did.

10 Q. And do you recall some of the conversations or
11 something to the effect the dialogue,
12 either in the conversations in the tapes
13 or in the written context of the letters
14 where supposedly, this plot or this plan
15 was supposed to happen way back in the
16 early part of the year?

17 A. Yes.

18 Q. And you recall that in the letters where Donna
19 indicated to Nathaniel or Nathaniel said
20 basically is that, "Well, I should have
21 done it then and you stopped me," and
22 Donna said, "You didn't stop me. I just

3070

1 didn't want to do it at all." Do you
2 remember that context at all?

3 A. I do, but I don't remember exactly.

4 Q. Do you remember something general to that
5 effect?

6 MR. WATKINS: I'm going to object
7 for the same reason that they objected that we
8 couldn't read the letters. The letters speak for
9 themselves. They are available for them to put the
10 contents.

11 THE COURT: Just a minute. I agree
12 with that objection, unless you have some point to
13 bring out, where you are going, other than just to
14 get into the content of the letters.

15 MR. LEWIS: We're not going to be
16 able to talk about the letters.

17 THE COURT: I think you may be able
18 to generally talk about the letters. It was ruled
19 on previously that the Prosecution would not be
20 allowed to read from the letters. You are in
21 effect, asking him questions about the contents of
22 the letters, which would be good for the goose, but

3071

1 if you have another point to make, then it is
2 necessary to use examples from the letters. I
3 won't stop you from doing that.

4 Q. Let me ask you this, Mr. Monroe, is that do
5 you remember generally in either, well,
6 it happened on here, I guess we just
7 heard it a few minutes ago, is there some
8 question in mind of Nathaniel Jackson
9 about the fact is that whether they are
10 going to do it or aren't going to do it;
11 do you remember that?

12 A. Yes, I do.

13 Q. Sounds like a solid plan, yet Nathaniel is
14 telling about whether you really want me
15 to do it or not do it, right?

16 A. Are you asking me my opinion?

17 Q. I'm just asking you, isn't that the general
18 drift of what actually we saw in the
19 general portion of this?

20 A. My drift of what I heard from Mr. Jackson's
21 point is he had his mind made up what he
22 was going to do.

3072

1 Q. So he had his mind made up and it was going to
2 talked about of it happen as soon as he got home that
3 Sunday. Monday night, he's going to go
4 do something?

5 A. That is what Mr. Jackson said.

6 Q. And we know for a fact since you have been
7 sitting here, on Monday night, they ended
8 up at the Red Lobster in front of 100 or
9 200 people having dinner?

10 A. No, Sir.

11 Q. They didn't?

12 A. They ended up at Red Lobster on Tuesday night.

13 Q. Then something didn't happen on Monday night?

14 A. No, Sir.

15 Q. And then on Tuesday night, I think I remember,
16 didn't Nathaniel say they would never
17 know because they wouldn't know I was
18 released from prison? Do you remember
19 him saying that?

20 A. That is what Nathaniel said.

21 Q. If they didn't know he was released from
22 prison, so he went to the Red Lobster on

3073

1 Tuesday night, I guess, and sat in front
2 as far as I know or talked in front of 100 people or
3 whatever, had the waitress who was a nice
4 lady. She was in there. She said, "I
5 remember those people. They were out
6 there in plain sight of everybody."
7 Nathaniel himself, right down the street,
8 right there at the Red Lobster, right?

9 A. Yes.

10 Q. Matter of fact, it was on Monday that he was
11 at the Warren terminal and Mr. McCoy came
12 in and said, that is Nathaniel?

13 A. No, Sir, that was Tuesday.

14 Q. Nothing happened on Monday, that was the day
15 it was supposed to happen?

16 A. Yes, Sir.

17 MR. WATKINS: I'm going to object to
18 this line of questioning.

19 THE COURT: I don't know where you
20 are going with this, but again, I'm going to
21 overrule your objection at this point.

22 Q. So it was Tuesday that he was at the Warren

3074

1 terminal and Mr. McCoy who was introduced

2 to Mr. McCoy as Nathaniel?

3 A. Yes.

4 Q. He didn't hide that day, right?

5 A. Is that a question?

6 Q. He didn't hide. He wasn't hiding from

7 Mr. McCoy, was he?

8 A. No, Sir. Talked about

9 Q. During the conversations, the telephone

10 conversations, there was some

11 conversations to the extent, this is

12 strictly on the telephone, not the

13 letters, but the telephone conversations,

14 they were going to break up at one time

15 in some of those telephone conversations?

16 A. There was talk of that.

17 Q. And Donna said that he was fooling around with

18 other women, right?

19 A. Donna had found a phone number for a female

20 and surmised that that is what was going

21 on.

22 Q. And Donna talked a lot about sex, we had a

3075

1 little bit of an inkling here, but there
2 was some more spicy sexual conversations,
3 weren't there?

4 A. Both of them did.

5 Q. Nathaniel was at Lorain Correctional facility
6 and I don't think it is a coed deal where
7 he was. He was in a four by ten cell for
8 about 24 hours a day. They talked about
9 sex, they almost broke up. Did Donna
10 talk about any white or black men, that
11 were nice to her at the office, the
12 terminal?

13 A. Yes.

14 Q. Told Nathaniel that, too. Did she also talk
15 about Robert close in time to probably
16 about somewhere in the area of maybe the
17 latter part of November, early part of
18 December, where he found the letters and
19 he talked with another man and he beat
20 her up and she had to wear sunglasses in
21 the middle of Summer with black eyes
22 because he found out about Nathaniel and

3076

1 Donna?

2 MR. WATKINS: I'll object.

3 MR. LEWIS: It is on there.

4 MR. WATKINS: It is not on the tape.

5 THE COURT: I don't wish to restrict
6 anything that is relevant or material, but that in
7 and of itself would not be relevant to what

8 happened here unless there's some basis you are
9 trying to build to make it relevant.

10 Q. I am looking for this. Do you recall that in
11 the telephone conversations?

12 A. What is the question, Sir?

13 Q. The question was that Robert had found out
14 about Nathaniel and Donna?

15 A. In the telephone conversations?

16 Q. Yes.

17 A. I don't recall that in the telephone
18 conversations.

19 Q. Are you sure?

20 A. No, Sir.

21 Q. Do you recall any other instances from the
22 telephone conversations where Robert was

3077

1 rather nasty to Donna?

2 A. I don't have any conversations between Donna
3 and Robert.

4 Q. I mean where Robert wasn't very kind to Donna
5 and Donna was conveying that to
6 Nathaniel?

7 A. No, I do not.

8 Q. You don't recall any of that? Do you recall
9 in the telephone conversations about the
10 man that stole the gun and Nathaniel told
11 Donna to report it to the police?

12 A. I don't know if he told her that on the phone
13 conversation or one of the letters.

14 Q. I know it is impossible for you Paul, to
15 remember all of this, but what they
16 extracted here is just excerpts or
17 whatever. This -- it is a transcript.
18 This is on 11-24-01. That is November
19 24, '01. Would you read where the yellow
20 is highlighted?

21 A. The caption in the transcript I have been
22 handed on the left side says, Nathaniel:

3078

1 "Call and report that gun, man. Man,
2 "call and report this cat, man. You don't
3 even know his whole name, do you?"

4 Donna: "Yes, and you know what, I know
5 what kind of place he works at and I just
6 looked at every one of those kinds in the
7 phone book and I'm going there Monday."

8 Nathaniel: "No, don't go." Donna:

9 "Because I want my fucking gun back."

10 Nathaniel: "Don't go there". Donna:

11 "Because I was gonna give you that gun

12 for your car and it was the nicest one

13 and you took it out and looked at it alot

14 and you loved it. And that's why I'm so

15 fucking mad. You think I give a shit

16 about money and guns?" Nathaniel: "Call

17 the police, report it, okay? Hello? You

18 hear me?" Donna: "Yes." Nathaniel:

19 "Call the police and report it man,

20 because if he do something with that gun,

21 man, you are going to get in trouble,

22 man. Call them when you get off the

3079

1 phone with me, man. Tell them somebody
2 you know come in and stole it. Tell them you know
3 who it is, man." Donna: "Oh no."
4 Nathaniel: "Tell them he took your
5 money, huh."

6 Q. So, Nathaniel is indicating to Donna to go
7 ahead and call the police, or report to
8 the police somebody stole her weapon,
9 right?

10 A. Right.

11 Q. There's an October 5 conversation. This is
12 Nathaniel talking to Donna. Start right
13 there.

14 A. This is transcript A50D10UL October 5, 2001,
15 page two. Halfway down the page.

16 "Nathaniel: I just wrote you, you know
17 what I'm saying. I wrote a six page
18 letter last night, and I hope you
19 understand this one, man. You know what
20 I'm saying." Donna, "Nate." "I mean, I
21 really realize Donna, you know what I'm
22 saying, I mean, I have what I did, I have

3080

1 what I did. You know what I'm saying. I
2 mean, Donna, you know what I mean. When
3 I got down here, man, you know what I
4 mean. I like know, I found God, and you
5 know. Got him into my life. You know
6 what I mean. And it is like, you know,
7 it just made me change everything,
8 Donna. You know what I'm saying. I mean
9 like, I said I'm sorry I hurt you, Donna.
10 You know, I mean, I really, I really need
11 you in my life, Donna. You know what I
12 mean. I'm hurt right now, and you know
13 what I mean. I am lost. You know, I
14 mean. And like I say, you know, I mean,
15 you know I got closer, you know, closer
16 relationship with God. You know, I mean,
17 and I just, you know, I hope you know,
18 you realize it, you know, and um, it's
19 like, you know, it gave me time, you
20 know. This really gave me time to think,
21 you know. I mean, Donna, before you
22 know, I mean, it was just like always

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1 out. I was always wanting to run, you
2 know. What I'm saying, but now, I ran at
3 the end of the road, where I can't run no
4 more, you know what I'm saying, I mean I
5 am tired of hurting myself, you know and
6 other people. You know what I mean. I
7 am willing to change everything I got,
8 mean. You know what I mean. As far as you
9 know, the people I hang out with, you
10 know, what I'm saying, all of the places,
11 you know, and the things you know, I mean
12 in order, you know to establish, you know
13 what I believe in, Donna. You know I am
14 willing to do all of that, get out and
15 get a job."

16 Q. That was the good part. You are getting
17 there. Go ahead.

18 A. "You know what I'm saying. Get my own place
19 and everything. I want, you know, I
20 mean, I want to do everything you know
21 that I can, you know, to prove to you
22 Donna, you know what I'm saying. I mean

3082

1 I'm really sorry, Donna. You know what I
2 mean? And it would never, you know, what
3 I'm saying, I would never do this again,
4 man, you know, I mean I just, I wrote so
5 much last night, man, you know, I mean I
6 really realize that Donna, you know what
7 I'm saying. You are a damn good woman, a
8 damned good woman. You know. You,
9 Donna, a damned good woman. It hurts me
10 so bad, you know, every time I think
11 about it."

12 Q. I think you covered most of it. Read this
13 one.

14 A. This is a conversation on November 3, 2001,
15 page four, starting on line four.

16 Nathaniel: "What?" Donna: "Well, I had
17 to come in and do the report, so I waited
18 until like 2:00 for you to call. Then I
19 came in here, I went over to the -- I was
20 writing you a letter and I went over to
21 the bakery to get a cup of coffee."

22 Nathaniel: "And he found the letter."

3083

1 Donna: "And he came to check up on me

MR. B 2 and he found or read the letter on the

3 desk." Nathaniel. "Oh, my Goodness."

4 Donna: "Yep." Nathaniel: "Oh." Donna:

5 "Now he knows for sure, but he doesn't

6 know your name, because I put hi,

7 sweetheart or hi, honey or something."

8 Nathaniel: "Oh, man." Donna: "Oh man."

9 Q. He, referring to Mr. Fingerhut?

10 A. I don't know.

11 Q. You have no idea? No speculation?

12 MR. WATKINS: I'll object. He's not

13 here to speculate.

14 THE COURT: Sustained.

15 Q. I see. You don't recall any conversation

16 where Donna actually said that

17 Mr. Fingerhut, Robert, knew about her and

18 Nathaniel? You don't remember that

19 anywhere in the telephonic conversations,

20 you don't remember it at all?

21 A. I don't remember that in the phone

22 conversations.

3084

1 Q. You don't remember that? Okay.

2 MR. LEWIS: Thank you very much.

3 MR. WATKINS: No redirect. We thank
4 the witness.

5 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
6 OF HEARING)

7 THE COURT: Folks, if you will be
8 back here in the morning at 9:00. We'll see how
9 long we have. We have at least four witnesses, it
10 may go into the afternoon. I don't know. None of
11 us know. We have some matters the rest of tomorrow
12 afternoon in any event, we have to handle in
13 regards to the case. Tomorrow after 4:30, each of
14 you will call that number to see whether you are to
15 report Monday or not. There's a possibility you
16 may have to come in Monday, there's a possibility
17 that you won't have to come in until Tuesday, but
18 you will definitely be here on Tuesday. Through
19 the course of the morning, early afternoon, I
20 expect that this case will probably be given to you
21 for deliberation. So, you need not worry about
22 bringing anything with you Monday, if you are

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1 notified to be here. You will not be sequestered
2 on Monday. Tuesday, there's a good possibility of
3 that. You make whatever arrangements.

4 Now, we have gotten through this trial to
5 this point. You folks have done everything that
6 has been requested of you. I would again remind
7 you that you're not to discuss anything, form any
8 opinions. You haven't heard all of the evidence
9 yet. There's been some interest with the news
10 media, you are not to watch anything on T.V.,
11 newspapers and whatever. And, keep up the good
12 work.

13 JUROR: If we're sequestered
14 Tuesday, will we need to provide arrangements?

15 THE COURT: You will stay right
16 across the street here. I'll see you back here
17 tomorrow at 9:00 in the morning.

18 (Court in Recess at 4:35 p.m.)
19
20

21 Friday, November 1, 2002:

22 (In-chambers at 9:20 A.M.)

3086

1 MR. CONSOLDANE: We're here
2 in-chambers, out of the hearing of the Jury, and I
3 am waiving the presence of our client. Yesterday
4 Mr. Lewis attempted to get some information from
5 Paul Monroe on to the record and the State objected
6 saying that they do not allow to attack the
7 credibility of a witness or the character of a
8 witness. And I have never heard of anything of
9 that before. I went home last night and tried to
10 research it. I thought maybe this victims' rights
11 had been able to pass a new law or something, but
12 that is not true. Nothing in there that says you
13 can't attack the character of the victim, and for
14 him to stop him from doing that was wrong. It is
15 another reason to add to the list of the mistrial,
16 the reasons we should have a mistrial in this case.
17 And on top of that is that Mr. Watkins opened the
18 door. He asked one of his own witnesses on direct
19 testimony, what kind of a guy was Robert Fingerhut,
20 and the guy went on to say, "Well, he was always
21 having jokes and he always had something to say."
22 Once he does that and he opens the doors, there's

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1 no reason why we can't talk about his character.

2 And we have indications that there are even some

3 credit card problems that happened, some credit

4 card fraud in his past, and the State has that

5 information, and I think that they should give that

6 to us, give it to Paul Monroe or Jim Teeple, and

7 let us get it in that way.

8 MR. LEWIS: I would like to add,

9 Tony is correct, because the rules in evidence

10 actually indicate the fact is that if we have a

11 self-defense, which we're asserting here, that

12 we're allowed to go into the character of the

13 victim here. The victim, as Mr. Watkins tried to

14 portray in the first part of the case, as a real

15 nice guy, everything above board, whatever, is not

16 true. We have evidence of the fact that he

17 produced and had in his wallet, carrying with him,

18 a badge as a State's Attorney Special Investigator

19 from Florida which is a bogus thing. He was never

20 ever a special investigator for the State office in

21 Florida. He also carries a card and had in his

22 wallet he was carrying, was supposedly, he was a

3088

1 special agent for the Department of Justice and was
2 supposed to be issued by the U.S. Marshal's office
3 out of Cleveland. Well, I contacted Cleveland and
4 David Harlow is the chief Marshal up there, and
5 before I indicated to him that Mr. Fingerhut was
6 deceased, he was going to have officers come down
7 here and talk to Mr. Fingerhut in regard to that
8 fraudulent card he was carrying, trying to
9 impersonate a special agent of the Department of
10 Justice. And the point being is that Mr. Fingerhut
11 obviously is a violater of the law, and at the same
12 time the Prosecutor opened the door in regard to
13 that, so I think, and it is all relevant in regard
14 to this whole situation as to what means or what
15 steps he would take in order to try to secure his
16 own position in regard to this whole situation
17 involving all of the property in the name of Donna
18 Roberts.

19 This becomes very important because he's
20 the one who has the absolute motive in order to get
21 rid of Mr. Nathaniel Jackson. Nathaniel Jackson is
22 a potential problem, and Donna Roberts could easily

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1 have married him or brought him in the house and
2 there's nothing in the name of Robert Fingerhut,
3 and that gives Mr. Fingerhut every motive in the
4 world to get rid of Mr. Nathaniel Jackson. Because
5 he becomes the problem and if Donna Roberts says,
6 "Leave the house, it is not your car," everything
7 was in her name. So, he had every reason in the
8 world to try and kill or to get rid of Nathaniel
9 Jackson. There's no doubt about it because
10 everything that he enjoyed or whatever you want to
11 call it, belonged to Donna Roberts and he would be
12 out the door. All of this is relevant. It should
13 be brought in. The Jury should know about it, and
14 there isn't anything about you can't attack the
15 character of a victim. That is absolutely
16 incorrect. Especially when you have a self-defense
17 according to the rules of evidence.

18 Now they can come back and say he was a
19 peaceful guy, but they have opened the door
20 already. That is exactly what they have done.
21 They have started off with the idea that he's
22 peaceful, nice guy, and that is not the case.

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1 MR. WATKINS: Your Honor, to start
2 with, the ruling that the Court made concerning the
3 collateral matters such as a badge or what he may
4 have done in Florida relative to a private
5 investigator, those matters clearly are not
6 relevant to this case, and there's nothing in the
7 record that in fact, the record would reflect that
8 the Defendant's version exactly, what happened, it
9 is already in the record. What he was or what
10 identification he had, regarding Florida or what
11 credit cards he had, has nothing to do with this
12 case. His character as to the past is irrelevant.
13 There's no information from the Defendant or
14 anyone, that that information has any bearing on
15 this case. It is simply an effort to put on trial
16 the victim and there's plenty of law, that when you
17 go into character evidence, you have to have a
18 foundation. And this is pure hearsay, what they
19 are talking about. Secondly, the general rule on
20 self-defense and the rules of evidence would
21 clearly indicate that if the Defendant knew acts of
22 violence, obviously that could come in to be

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1 relevant in self-defense. Even acts of violence
2 that were on record, we have no evidence, there's
3 nothing in our file. They have had access to our
4 file regarding violence on the part of this victim.
5 That is irrelevant to this case because they don't
6 have anything regarding acts of violence by the
7 victim. Therefore, the victim's character cannot
8 be an issue, because there's no evidence that deals
9 with the character of the victim as to propensity
10 for violence. There's zero. They have had
11 complete access and the reason they have
12 information about credit cards because they have
13 seen our whole file, and I think the rulings
14 yesterday were completely appropriate, and that
15 this case has to end at an appropriate time and
16 that this case should be dealing with what the
17 evidence is in the case, not Mr. Lewis'
18 speculation, not Mr. Consoldane's speculation of
19 what if, if this is possible. We know that
20 Nathaniel Jackson, his only evidence is what the
21 admission is he made in his tape. This stuff has
22 nothing to do with what Nathaniel Jackson said

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1 happened.

2 Now, I'm going to make a further motion
3 on my own. I believe that the witnesses this
4 morning were listed by Mr. Lewis and
5 Mr. Consoldane, which deal with the lease dealing
6 with the vehicle or vehicles of the co-defendant in
7 this case, Donna Roberts, the business, the house
8 title, are totally irrelevant under Ohio law.
9 There's nothing in Ohio law that requires as a
10 matter of proof in evidence that a victim be the
11 owner of a vehicle. In fact, the victim under Ohio
12 law, could be an owner that has possession, even if
13 it is unlawful. So this evidence that we're
14 getting this morning is totally irrelevant, and
15 Your Honor, I would only request instead of making
16 a motion after each witness to strike, that we have
17 an opportunity that the Court would wait until
18 Monday, and let both sides brief this issue. It is
19 important to the case because it is obvious that if
20 it isn't relevant, it can be confusing and the
21 purpose of Jury instructions and the purpose of
22 rulings is to make sure that the trial stays on

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1 track.

2 MR. CONSOLDANE: Your track.

3 MR. WATKINS: I said I am only
4 suggesting, Your Honor, that we brief this, as to
5 this issue, and then before the Jury, then the
6 Court could decide.

7 MR. CONSOLDANE: First of all, he
8 opened the door. He opened the door when he talked
9 about his character. He can't close it now.

10 MR. WATKINS: I was going to let
11 Chuck say a few words.

12 THE COURT: Go ahead.

13 MR. MORROW: Judge, evidence rule
14 404 talks about character evidence being
15 inadmissible to prove conduct, and indeed it says,
16 "Evidence of a persons's character or trait of his
17 character is not admissible for the purpose of
18 proving that he acted in conformity therewith on a
19 particular occasion, subject, to the following
20 exceptions. Character of the accused." And that
21 is 404-A(1). "Evidence of a pertinent trait of his
22 character offered by an accused, or by the

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1 Prosecution to rebut the same is admissible;
2 however, in prosecutions for rape, gross sexual
3 imposition and prostitution, the exceptions
4 provided by the statute enacted by the General
5 Assembly applicable. (2) Character evidence of the
6 victim. Evidence of a pertinent trait of the
7 character of the victim of the crime offered by an
8 accused, or by the prosecution to rebut the same,
9 or evidence of a character trait of peacefulness of
10 the victim offered by the Prosecution in a homicide
11 case to rebut evidence that the victim was the
12 first aggressor is admissible." In this case,
13 there has not been any evidence presented by the
14 Defense to suggest that the deceased was the first
15 aggressor. We have speculation and allegations by
16 the Defendant that that is the case. Indeed, now
17 that is the Defendant's own self-serving statement
18 that was made, and I think to allow -- to allow
19 allegations in respect to his character for
20 purposes of this badge that he was carrying, for
21 purposes of impeaching his character beyond
22 aggressiveness is irrelevant, and that is what they

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1 want to get into. They are attacking his character
2 as a person, not his character as to whether he was
3 the first aggressor or not, so allow them to get
4 into questions about whether or not he had this
5 badge. Whether or not the Cleveland Federal Office
6 was going to investigate him has nothing to do with
7 his aggressiveness tendencies.

8 MR. WATKINS: And Jim Lewis would
9 have to bring witnesses to go into what position he
10 had in Florida, what position he had here. That is
11 why you have the collateral evidence rule.

12 MR. LEWIS: It is bogus.

13 MR. WATKINS: You have to prove it.

14 MR. MORROW: We're not attacking
15 whether he's truthful or not and that what their
16 attempt is to do to show that this man --

17 THE COURT: I have been through this
18 with the Court of Appeals before and here's where
19 we're at.

20 MR. LEWIS: Let me finish. Now,
21 what Mr. Morrow said is that basically, just
22 because the Defendant's statement says

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1 self-defense, he calls it speculation, all of that,
2 and he doesn't consider that evidence at all. It
3 is evidence. The Jury can consider that. They may
4 well believe that that is the fact in this case.
5 And in regard to the fact that Mr. Watkins says
6 there's not one iota of evidence in here that
7 Mr. Fingerhut was aggressive or did any violence,
8 whatever, that's not true. And the letters from
9 Donna Roberts to Nathaniel Jackson within four or
10 five days of the time that this occurred, there's
11 an indication of the fact that he beat her up so
12 bad, he gave her black eyes, and she called
13 Someplace Safe and she also ran around town with
14 sunglasses on because he beat her up. They
15 introduced it. It is their letters. They
16 introduced it. It is in the record now. So
17 there's evidence of that.

18 Let me make this simple. In regard to
19 the witnesses we have this morning regarding these
20 properties, I'll give the Judge -- I'll give a
21 hypothetical. Let's turn this around. Let's turn
22 this around where Donna Roberts ends up dead.

3097

1 Mr. Fingerhut is the suspect and it just so happens
2 that Donna Roberts had a boyfriend named Nathaniel
3 Jackson. And the Prosecution goes through and
4 finds out that all of the property was in the name
5 of Donna Roberts. So Donna Roberts, it was all her
6 property to begin with. Then they happen to find a
7 Will that says Donna Roberts decides to give
8 everything to a man by the name of Robert
9 Fingerhut. Now, the State would turn around and
10 say that is introducible, this is evidence of
11 motive for him to kill her. And if it is
12 introducible this way, it is introducible the other
13 way to show that this man had a motive to kill
14 Nathaniel Jackson because he was a threat to
15 whatever this man used and operated, during his
16 lifetime. Even though he didn't own it, he was a
17 threat to him, and that is evidence of motive.
18 We're allowed to bring that in, and I don't care if
19 he calls it speculation, because that is evidence.
20 What we're doing, what he's trying to do is stop us
21 from presenting any defense at all and that is
22 ridiculous.

3098

1 MR. CONSOLDANE: One other thing is
2 that whatever argument they had about character,
3 went out the door when they put a witness on the
4 stand and asked him what kind of a guy
5 Mr. Fingerhut was. They did that. If they did
6 that, once the door is opened, we're allowed to
7 walk through.

8 MR. WATKINS: The questions about
9 employees' relationship is relevant in the sense of
10 to show that they knew, how well they knew him.
11 They had every opportunity with every employee to
12 deal with the relationship dealing with the
13 employee and the victim in this case. They had
14 ample opportunity. This evidence most importantly,
15 is the question of whether or not and the fact of
16 self-defense, they want to go into crimes dealing
17 with dishonesty or theft and fraud, dealing with
18 the self-defense case. That is not appropriate.
19 It is not what the law --

20 MR. CONSOLDANE: You opened the
21 door.

22 MR. WATKINS: I did not. I'll let

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1 the Court rule.

2 THE COURT: Self-defense is an
3 affirmative defense. And self-defense primarily is
4 based on the mental state of the, in this case, the
5 Defendant, at the time that the incident leading to
6 the claim of self-defense arises. The Jury is told
7 through the instruction, you have to look within
8 the mind of the Defendant at the time that this
9 murder occurred, to see if a reasonable man would
10 think that he was justified in defending his own
11 life. Now, the character of the victim is totally
12 irrelevant unless and until something occurs,
13 whereby it is made relevant and that is for the
14 presentation of the affirmative defense of
15 self-defense. At that time, the Defense has a
16 right to go back and to review and to, if need be,
17 call the State's previous witnesses to establish
18 any actions maybe to establish that the victim had
19 a reputation for being aggressive, had made
20 threats. But to bring that all up at this point it
21 is immaterial. It is irrelevant because it only
22 becomes relevant if the affirmative defense of

3100

1 self-defense is raised. You wish the Prosecution
2 to take it on good faith that you are going to
3 assert -- you have no duty to do anything. So, you
4 get into the situation where you can get all kinds
5 of evidence in here. If it exists, I don't know if
6 it does or not, of the deceased being this total
7 bad guy and a bum. You know, one could infer that
8 he's some kind of a nut, because he carries these
9 bogus identifications around. Or you can just as
10 easily infer, hey this guy collects these kinds of
11 things. People collect all kinds of things. You
12 ascribe a sinister motive to the fact that he had
13 those things, which may or may not be true. It
14 only becomes relevant if self-defense is put up,
15 because the character of the victim himself, has
16 nothing to do with a justification for murder,
17 other than the relationship to the Jury question of
18 whether Nathaniel Jackson acted in self-defense.
19 If he had, within his knowledge, certain
20 propensities, or something had been said or done,
21 including the fact that he had beat up the wife a
22 couple of weeks before, only to lay the groundwork,

3101

1 as to what the Defendant was thinking at the time
2 he asserted the right of self-defense. That is the
3 only relevancy that the character or history of
4 this victim has to this case.

5 MR. CONSOLDANE: How about the fact
6 that they made it an issue when they asked him what
7 kind of guy was Robert Fingerhut? Now, am I
8 supposed to just ignore that and let them put that
9 in?

10 THE COURT: You didn't object to it.
11 The question was irrelevant to where we're at in
12 the case.

13 MR. CONSOLDANE: I didn't object.

14 MR. WATKINS: Also showed he was a
15 jokester. Had all kinds of stupid stuff.

16 MR. CONSOLDANE: Once they go there
17 then, I am permitted to go there, also.

18 THE COURT: Tony, my point is, I
19 have no problem with whenever I have a close call,
20 I make it a practice to go with the Defendant, you
21 can't go wrong there.

22 (OFF THE RECORD)

3102

1 THE COURT: We're on the record.

2 MR. WATKINS: The State is objecting

3 to the next three or four witnesses, which are

4 witnesses that the Defense will present testimony

5 as to ownership or title to vehicles and to home,

6 business, that are in the name of Donna Roberts.

7 The State believes it is irrelevant and is making a

8 motion that, in limine, that this evidence be not

9 allowed on relevancy grounds.

10 Further, it has been discussed

11 in-chambers that in lieu of objecting and making

12 motions to strike, that the State is now making

13 that motion and will brief this since some of this

14 will tie into instructions and questions of law,

15 subsequent to the dismissal of the Jury for the day

16 and prior to the commencement of the trial.

17 THE COURT: We have gone over this

18 repeatedly and the Court's position is that I think

19 that it is relevant from the standpoint that

20 Mr. Jackson's charged with the specification of

21 murder and robbery. Since the Prosecution is

22 alleging that there was this conspiracy, it is

3103

1 arguable, I would imagine on Mr. Jackson's part
2 that there could be no burglary or robbery, because
3 he had permission to take the property of Donna
4 Roberts. The State assures me that they have case
5 law that shows that that is not a defensible
6 position for Defendant to take, but I think at this
7 juncture, it is a factual reality, and that the
8 Defense should be afforded an opportunity to
9 establish that. There's already evidence in here
10 alluding to that. The question of the character of
11 the deceased is something that I'm going to allow
12 both sides an opportunity to present some briefing
13 on. I think that it is only, as I have stated, it
14 is only relevant in regard to self-defense. The
15 real issue, I guess, is whether at this point, the
16 Defense has a right to lay the groundwork towards
17 that end prior to the time that it is actually
18 asserted, and that is what I'm not sure about.

19 MR. CONSOLDANE: I think it has
20 already been asserted in the tape that the
21 Prosecution presented. He said about him arguing,
22 pulled the gun, he grabbed him and that is how his

3104

1 finger got shot. That shows self-defense right
2 there. Can't be any more plainer than that.

3 THE COURT: That is true.

4 MR. WATKINS: May I add? I guess
5 the self-defense issue is something that we could
6 take up obviously later. I may be in agreement
7 that that instruction should be given. So there
8 may not be a contest from the State's view. I feel
9 strongly, however, that the Court should reconsider
10 at the appropriate time, with briefs, that in fact
11 that there's no evidence for example in this case,
12 that there was any consent given to Jackson to take
13 the man's car that he just come home in, under all
14 of the evidence.

15 THE COURT: I agree --

16 MR. WATKINS: I think the Court
17 alluded to that.

18 MR. CONSOLDANE: He's putting the
19 cart before the horse. We don't have to prove
20 anything. He has to prove he did not have
21 permission to take the car. That is one of the
22 elements of the crime. He has to prove that he did

3105

1 not have permission.

2 MR. WATKINS: The evidence in this
3 case is overwhelming that this victim was going
4 home in his car. That is all the evidence that any
5 reasonable person can conclude from the evidence in
6 my opinion at this stage.

7 MR. CONSOLDANE: That is an element
8 of the offense that needs to be proven by the State
9 period. Check it. Look it up. It is in the
10 elements of the crime.

11 MR. WATKINS: I'll prepare a brief.

12 THE COURT: Let's go on and put the
13 testimony on.

14 (End of in-chamber discussion.)

15 In Open Court at 9:50 A.M.:

16 THE COURT: Good morning everyone.
17 Mr. Lewis, are you ready to proceed?

18 MR. LEWIS: Yes, I am.

19 THE COURT: Let's keep the record
20 straight. The State has rested on your
21 presentation, is that correct?

22 MR. WATKINS: Subject to later

3106

1 ruling on the admission of Exhibits. We'll rest
2 after that ruling.

3 THE COURT: You wish to produce
4 evidence on behalf of Mr. Jackson?

5 MR. LEWIS: Yes.

6 BRAD CAIN

7 being duly sworn according to law, on his oath,
8 testified as follows:

9 DIRECT EXAMINATION BY MR. LEWIS:

10 Q. Brad, would you please give your full name for
11 the Jury?

12 A. Brad Cain.

13 Q. And where do you reside?

14 A. New Castle, Pennsylvania.

15 Q. Can you tell us your occupation?

16 A. Business manager at Preston Auto Mall.

17 Q. How long have you been doing that?

18 A. Three and a half years.

19 Q. Is the economy going to go into the tank or
20 are you going to save it?

21 A. It's a little slow right now.

22 Q. Can you give us an idea of what your duties

3107

1 are in regard to your position with

2 are leasing Preston Auto?

3 A. I process the paperwork for registration and

4 bank paperwork for approvals on

5 automobile deals at the dealership.

6 Q. And Preston Auto is located, the specific

7 dealership, where is that located?

8 A. Youngstown Road in Warren, Ohio, 3843

9 Youngstown Road.

10 Q. And in regard to the automobiles, obviously,

11 you sell automobiles outright, and banks

12 will finance those. You also do auto

13 leasing, do you not?

14 A. Correct.

15 Q. Can you give the Jury an idea how the auto

16 leasing works?

17 A. When someone leases a vehicle, it is

18 registered to the leasing company. They

19 have the rights to the vehicle for "x"

20 amount of years. It could be three-year,

21 four-year, five-year. "X" amount of

22 miles per year, just like they own the

3108

1 vehicle. It is just that it is
2 registered to the leasing company like
3 they are renting that vehicle for that
4 amount of time.

5 Q. And it is actually the bank's or listed as the
6 title owner, correct?

7 A. Yes, the bank is the registered owner.

8 Q. Through their authority, they have the
9 individual, who is actually leasing the
10 car, who eventually can buy it out?

11 A. Yes.

12 Q. But then they become the lessee for the term?

13 A. Yes.

14 Q. Did you have an occasion in the last three or
15 four years to lease cars to a Donna M.
16 Roberts?

17 A. That is correct.

18 Q. And do you have the documents with you?

19 A. I do.

20 Q. First off, do you have leasing agreements, the
21 actual agreement where she leased the
22 vehicles?

3109

1 A. Yes, I do.

2 Q. Do you have a leasing agreement by Donna
3 Roberts for a 2000 Chrysler?

4 A. 2000 Chrysler 300-M, correct.

5 Q. On that leasing agreement, whose name appears
6 as the lessee?

7 A. Donna Roberts.

8 Q. Does the name Robert Fingerhut appear anywhere
9 on that leasing agreement having any
10 interest in the property or as a lessee?

11 A. No.

12 Q. And that was leased as of what date to her?

13 A. The lease date is August 28, 1999.

14 Q. And in regard to people leasing cars, I'm sure
15 you just don't lease them to anybody, you
16 want to check out and see if they have
17 got any credit.

18 A. Yes.

19 Q. I am sure the bank wants to know that, too?

20 A. Correct.

21 Q. Did you do a credit application on that in
22 regard to Donna M. Roberts?

3110

1 A. Yes. Yes, I did.

2 Q. Did you get a return on that credit
3 application that you filled out?

4 A. Yes.

5 Q. And do you have that credit application with
6 you?

7 A. Yes, I do.

8 Q. Could you pull that out for us for that
9 particular vehicle, that 300 Chrysler?

10 A. Okay.

11 Q. The credit application is in the name of who?

12 A. Donna M. Roberts.

13 Q. Just out of curiosity, does the name Robert
14 Fingerhut appear anywhere on the
15 application?

16 A. No.

17 Q. What is the occupation she puts down?

18 A. Youngstown Greyhound franchise, operator
19 owner.

20 Q. And I am assuming when individuals such as
21 Mrs. Roberts there fill that out, you put
22 that in the computer and it gives you,

3111

1 you check it out basically, right, gives
2 you an okay or a no?

3 A. We fax it to the bank.

4 Q. And in this case, it was approved, and you
5 went ahead and executed that lease
6 agreement to Donna Roberts, correct?

7 A. Correct.

8 Q. Did you also get a copy of the registration
9 statement required by the State of Ohio,
10 as far as indication of ownership, that
11 would be carried by the owner of the
12 vehicle?

13 A. When we lease the vehicle, we register the
14 vehicle, we get the plates for the
15 lessee.

16 Q. And in this case, do you have the registration
17 statement there or a copy of it?

18 A. Yes, I do.

19 Q. And it is in the name of who?

20 A. First National Bank of PA and additional owner
21 Donna Roberts.

22 Q. Does the name Robert Fingerhut appear anywhere

3112

1 in that registration statement?

2 A. No.

3 Q. Now, going on to -- I'll tell you what, would
4 it be permissible, I would like to have
5 those marked as Exhibits, but I think,
6 Brad, you want those original documents
7 back?

8 A. Yes, please.

9 Q. Could we have a stipulation that we could have
10 those?

11 THE COURT: Any objection to marking
12 those and making copies for the record?

13 MR. WATKINS: My objection will
14 continue, but I'll stipulate as to the copies. Are
15 you talking about the two cars, the lease of the
16 two cars?

17 MR. LEWIS: Yes.

18 Q. There was another vehicle leased by Donna
19 Roberts?

20 A. Correct.

21 Q. And in regard to that transaction, it will be
22 the same as the previous transaction,

3113

1 ... would it not?

2 A. Correct.

3 Q. And you have a lease agreement for a 300

4 Chrysler 2001, and that was in the name

5 of who?

6 A. Donna Roberts.

7 Q. And does that lease agreement have the name of

8 of the name Robert Fingerhut on it, or any interest

9 in the lease agreement?

10 A. No.

11 Q. And that lease agreement, there's the credit

12 application, is there not?

13 A. Correct.

14 Q. And the credit application is in the name who?

15 A. Donna Roberts.

16 Q. The name Robert Fingerhut appear anywhere on

17 the credit application?

18 A. No, it does not.

19 Q. And Donna Roberts, what is she indicated, what

20 is her occupation?

21 A. Greyhound transportation, general manager.

22 Q. And likewise, that credit application was sent

3114

1 on to the bank for approval and it was

2 approved?

3 A. Correct.

4 Q. And the lease agreement was executed for Donna

5 Roberts through Preston, correct?

6 A. Correct.

7 Q. And in addition to that, you took care of the

8 registration of the vehicles, did you

9 not?

10 A. Yes.

11 Q. Do you have a registration there?

12 A. Yes.

13 Q. And that is the name of who?

14 A. Fifth Third Auto Leasing and Donna Roberts as

15 the additional owner.

16 Q. The name Robert Fingerhut appear anywhere on

17 the registration?

18 A. No.

19 Q. I'll show you what has been marked as

20 Defendant's Exhibit F. Can you tell us

21 what that is?

22 A. That is a credit application in the name of

3115

1 Donna Roberts.

2 Q. That is the one you previously referred to?

3 A. Yes, on the 2000 Chrysler 300-M.

4 Q. Is that a true and correct copy of the
5 application you had in regard to that?

6 A. Yes, it is.

7 Q. I'll show you what has been labeled
8 Defendant's Exhibit G, can you tell us?

9 A. Registration on the same vehicle.

10 Q. That is the one you previously testified to?

11 A. Correct.

12 Q. Is that a true and correct copy of the
13 registration statement in the file?

14 A. Yes.

15 Q. And H, there's really two sheets, put them
16 together.

17 A. That is the lease agreement.

18 Q. And that is the one signed by Donna Roberts as
19 the lessee?

20 A. Correct.

21 Q. Incidentally, all of the records we're talking
22 about here, they are kept, I think you

3116

1 actually witnessed a couple of these, but
2 they are all kept in the normal course of
3 business at Preston Auto Mall?

4 A. Yes.

5 Q. In regard to -- we had the credit application
6 on that one and registration statement
7 and lease agreement?

8 A. Correct, that is the 2001 lease.

9 Q. In regard to the lease agreements, the
10 technical owner or the owner of the
11 vehicle technically is the bank. It is
12 like the other situation where you buy a
13 vehicle, you would be the title holder
14 and they would hold a lien against it,
15 right? That is the other way?

16 A. When you purchase a vehicle, on a lease the
17 bank is the registered owner.

18 Q. And the lessee is the person who has the
19 ownership interest as a lessee, correct?

20 A. Yes.

21 Q. And you indicated earlier, that because of the
22 lease agreements, they normally have

3117

1 provisions in there about mileage and so
2 forth, but the lessees at the end of the
3 lease, either purchase the vehicle or
4 return it and turn it in basically, is
5 that it?

6 A. That is correct.

7 Q. The lessee and the bank are the only ones that
8 can have the ownership interest in the motor
9 vehicle, is that correct?

10 A. Yes.

11 MR. WATKINS: We'll stipulate what
12 they are going to bring back is true.

13 MR. LEWIS: The State stipulated the
14 next three Exhibits admissible.

15 MR. WATKINS: For purposes of
16 identification.

17 MR. LEWIS: For purposes of
18 identification.

19 THE COURT: Stipulated?

20 MR. WATKINS: Yes. No questions.

21 MR. LEWIS: Thank you very much. I
22 appreciate it.

3118

1 TAMMIE KAYE

2 being duly sworn according to law, on her oath,

3 testified as follows:

4 DIRECT EXAMINATION BY MR. CONSOLDANE:

5 Q. Tammie, state your name for the Jury.

6 A. Tammie Kaye.

7 Q. And where do you work, Tammie?

8 A. Deputy Registrar at Elm Road for the Bureau of
9 Motor Vehicles.

10 Q. And when you need to get your driver's license
11 renewed or registration for their car,
12 they see you?

13 A. Right.

14 Q. You brought us some papers today that have
15 been marked as Defendant's Exhibit L.
16 Could you explain to the Jury what those
17 are?

18 A. Those are just the computer records showing
19 the registration to this particular
20 vehicle.

21 Q. And what vehicle is that?

22 A. 2001 Chrysler four door, and the VIN number.

3119

1 Q. Does it list the license number?

2 A. Yes.

3 Q. Would you read that?

4 A. [REDACTED].

5 Q. And who is that car registered to?

6 A. It is registered to Fifth Third Auto Leasing
7 and the vehicle is leased to Donna
8 Roberts.

9 MR. CONSOLDANE: Thank you. I have
10 no further questions.

11 MR. WATKINS: No questions.

12 THE COURT: You may step down.
13 Thank you.

14 ROBERT STANTON

15 being duly sworn according to law, on his oath,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. LEWIS:

18 Q. Bob, would you please state your name for the
19 record?

20 A. Robert J. Stanton.

21 Q. And where do you live?

22 A. [REDACTED], Girard, Ohio, 44420.

3120

1 Q. And what is your present occupation?

2 A. I am the chief deputy appraiser in the
3 Auditor's Office of Trumbull County.

4 Q. And who is the Auditor of Trumbull County?

5 A. David A. Hines.

6 Q. You are here representing David, is that
7 correct?

8 A. That is correct.

9 Q. And how long have you been in the Auditor's
10 Office of Trumbull County?

11 A. Since 1980.

12 Q. And I assume that you have had different
13 positions along the years?

14 A. That is correct. My current position I have
15 held since 1985.

16 Q. And can you give the Jury some idea, just your
17 general duties in regard to the Auditor's
18 Office?

19 A. Well, I supervise our real estate appraisal
20 staff, in conjunction with working on all
21 of the State mandated programs that go
22 through the Auditor's Office dealing with

3121

1 real estate evaluation.

2 Q. And the Auditor's Office is more or less like
3 the financial or the accountant for the
4 county, is that what it is basically?

5 A. That is correct. Mr. Hines is the chief
6 fiscal agent for the State of Ohio.

7 Q. And as a part of that, you do and maintain
8 real estate appraisal records, correct?

9 A. That is correct.

10 Q. Those appraisal records actually contain a lot
11 more information, such as ownership,
12 dimensions, square footage, tax values,
13 all of that, correct?

14 A. Yes, Sir.

15 Q. And all of that information is collected by
16 the Auditor's Office, and of course, it
17 is also generated by virtue of the
18 appraisers that you have appraising real
19 estate of all of us here in Trumbull
20 County, right?

21 A. Correct.

22 Q. And that is how we arrive at what the tax is

3122

1 going to be on the real estate every year
2 basically, based on the rate, as it
3 adjusts during the year, right?

4 A. The starting place is the market value times
5 35 percent becomes the tax or assessed
6 value, and that value is applied to the
7 tax rate in the taxing district.

8 Q. And pursuant to the subpoena, were you
9 requested that you bring in, if there was
10 on record, any properties owned by Donna
11 M. Roberts, is that correct?

12 A. That is correct.

13 Q. And did you find any such records in regard to
14 Donna M. Roberts?

15 A. We found three records.

16 Q. If you could, are these actual copies of what
17 you have gotten out of the data base on
18 file with the Trumbull County Auditor's
19 Office?

20 A. That is correct.

21 Q. Do they accurately reflect the records
22 maintained by the Trumbull County

3123

1 Auditor, David Hines?

2 A. That is correct.

3 Q. And these were normally compiled in the
4 day-to-day business of the Auditor's
5 Office, performing its functions?

6 A. They are already a matter of public record, so
7 they are there.

8 Q. The Auditor's Office is the one who generates
9 these documents, are in the Auditor's
10 Office as well -- as well as the Web
11 site?

12 A. That is correct.

13 Q. The first one I'll show is what has been
14 labeled as Defendant's Exhibit M. Can
15 you tell the Jury what that document
16 represents?

17 A. These are the current real estate records for
18 254 Fonderlac in Howland.

19 Q. And those records contain indications of
20 ownership, correct?

21 A. Ownership and valuation and history of
22 ownership.

3124

1 Q. And as ownership or history of ownership,
2 whose name appears there at least as far
3 as ownership goes?

4 A. Donna M. Roberts.

5 Q. And anywhere in the history or anywhere else
6 in the documents, is there any occasion
7 of any ownership by the name of Robert S.
8 Fingerhut?

9 A. No, Sir.

10 Q. The valuation on the property was how much as
11 of the last reporting period?

12 A. As of our tax lien date, January 1, 2002, our
13 value, market value, that is \$174,500.

14 Q. On Defendant's Exhibit N, can you indicate
15 what that record is?

16 A. These are the real estate records for [REDACTED]
17 [REDACTED] in Warren City.

18 Q. And the property address is actually what on
19 there, do you have it?

20 A. [REDACTED]

21 Q. You said that. And ownership-wise, who is the
22 title holder, or the owner of that

3125

1 property?

2 A. The current owner is Dwayne Lang.

3 Q. And who was the previous owner, who
4 transferred that property?

5 A. Donna Roberts.

6 Q. Does the name Robert S. Fingerhut appear
7 anywhere in the records as having any
8 interest or ownership in the property?

9 A. No, it does not.

10 Q. The value of the property is listed as what
11 for tax purposes?

12 A. Again for January 1, 2002, our valuation,
13 market value-wise for this property is
14 \$48,200.

15 Q. And the next Exhibit there, Defendant's
16 Exhibit O. What is that?

17 A. These are the real estate records for [REDACTED]

18 [REDACTED]

19 Q. And the name ownership-wise as of December of
20 2001 would have been who?

21 A. That would have been in December 2001, it was
22 Donna M. Roberts.

3126

1 Q. And the appraised value?

2 A. Our appraised value is \$28,400.

3 Q. Does the name Robert S. Fingerhut appear
4 anywhere there as having any ownership
5 interest whatsoever?

6 A. No, it does not and this property has
7 transferred hands.

8 Q. And who was it sold to?

9 A. The current owners on record is Adea L. Riley,
10 along with Andre B. Riley.

11 Q. And that would have been transferred by only
12 Donna M. Roberts, correct?

13 A. One would assume so, since she was the owner
14 on record and would have the name on the
15 deed.

16 Q. These are all accurate records that are
17 currently on file at the Trumbull County
18 Auditor's Office, and they accurately
19 depict what is portrayed and what you
20 testified to?

21 A. That is correct. They are all a matter of
22 public record.

3127

1 MR. LEWIS: Thank you very much.

2 CROSS EXAMINATION BY MR. WATKINS:

3 Q. Do you have any record of mortgages on those
4 homes with you?

5 A. No, we were not asked to supply any
6 information on mortgages at this time.

7 MR. WATKINS: Thank you.

8 THE COURT: Thank you.

9 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
10 OF HEARING)

11 THE COURT: We have just had Side
12 Bar. The Court is attempting to discuss the
13 schedule as to how we're going to handle this and
14 Mr. Consoldane feels that we were getting into
15 other matters, so I had to put a stop to that, and
16 we'll put on the record everything at the right
17 time.

18 MR. CONSOLDANE: I just wanted
19 time-wise, I didn't want to get into any arguments,
20 not to be put on the record.

21 THE COURT: Fair enough.

22 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT

3128

1 OF HEARING)

2 THE COURT: We have had continuation
3 of Side Bar on the scheduling here, is that
4 correct, gentlemen?

5 MR. WATKINS: Yes.

6 MR. CONSOLDANE: Yes.

7 THE COURT: The Defense, I
8 understand that you have called your last witness
9 for the day, is that it?

10 MR. LEWIS: That is correct.

11 THE COURT: Folks, you are going to
12 be released at this point with the intention that
13 you be back here Tuesday morning. There will be
14 nothing Monday. You should come prepared, if you
15 have to stay and be put up in the hotel overnight.
16 There's an outside chance, and I think it is a very
17 slim chance that that would not occur, that you
18 would not be sequestered Monday, I think that you
19 all -- that we have to get done during the work day
20 Monday, that the case would be in your hands. If
21 it turns out that that isn't the case, it would be
22 Tuesday, but we're going to plan on Monday having

3129

1 that occur.

2 MR. WATKINS: Tuesday.

3 THE COURT: Tuesday. You are
4 probably asking yourselves, why is this so
5 disjointed at this point. There are numerous
6 reasons and it is something that you should not
7 concern yourself with. We're trying to get the
8 evidence to you as quickly as we can accomplish
9 here, but there are various things that have to be
10 argued, have to be decided, and that takes time at
11 this juncture. It is just part of the process.

12 So, that being said, I'll again remind
13 you, you know by now, but I must remind you, you
14 are not to watch anything on T.V., nor read
15 anything in the newspaper or have any discussion
16 with anyone else. You should keep your own
17 counsel. Beginning next week, this will be in your
18 hands and you will have plenty of time to discuss
19 the evidence that you have heard. And you will
20 have the advantage at that time of having an
21 instruction of law with you, which will make it
22 much easier to go through these legal concepts and

3130

1 apply the evidence to the law.

2 We thank you all for your patience. You
3 are still a very attentive Jury, that is unusual.
4 I haven't seen anybody sleeping yet. The Judge is
5 allowed to close his eyes, I'm not sleeping. I'm
6 not allowed to do that. Have a nice evening.
7 We'll see you Tuesday morning.

8 Folks, before you leave, I did not
9 explain to you, I apologize. We have had in the
10 past, situations where people have gone to work, at
11 this juncture of the trial, and it causes nothing
12 but problems, but people just want, wanting to have
13 you talk about it and that sometimes is almost more
14 than can be resisted. So, I trust that none of you
15 are suffering too much on the financial end of it.
16 I would ask you or tell you, not to go to work
17 tomorrow or Monday.

18 JUROR: What about this afternoon?
19 I am a waitress.

20 THE COURT: You have been working
21 during the course of the trial on weekends, of
22 course. The only reason I started to do this is

3131

1 that we have had jurors tell me, "I went to work
2 and everybody wants to know all about it." It
3 makes it difficult. Any of you who do not have to
4 go to work, some of you, if you have collective
5 bargaining and that, you are getting paid, don't go
6 to work. If it is creating an economic hardship
7 for you not to work, there's nothing that says you
8 can't, but just please remember, because we have
9 had so many cases over the years, that we have had
10 trouble with after the trial was over, with things
11 coming up where jurors have talked to somebody, and
12 all of this, your work as well as ours, that goes
13 into a trial. It is foolish to have that come into
14 the picture. If any of you have to go to work, do
15 so, but just remember the admonition. You cannot
16 let anybody come and try to talk to you about the
17 thing.

18 MR. LEWIS: Fair enough.

19 MR. WATKINS: Thank you.

20 (Court in Recess at 10:45 A.M.)

21 (Jurors excused.)

22 THE COURT: On the record, are you

3132

1 ready to review the proffer of admission of the
2 various State's Exhibits? Has the Defendant had an
3 opportunity to review the recent compilation made
4 by Attorney Morrow?

5 MR. CONSOLDANE: Yes.

6 THE COURT: This looks pretty much
7 in order. The easiest way, if you have done this,
8 is to go through and see which Exhibits you do not
9 object to or we can take them in order.

10 MR. LEWIS: It is probably easier to
11 go right down the line.

12 THE COURT: All right.

13 MR. CONSOLDANE: We have gone
14 through this, between Dennis and I, and then report
15 to you which ones we object to, but if you want to
16 sit in on the whole thing.

17 THE COURT: I don't wish to, but
18 whatever is workable, you tell me. Number one, the
19 911 tape.

20 MR. CONSOLDANE: We object to that,
21 that nobody ever identified as to whose voice that
22 was on the phone. Could have been anybody calling

3133

1 and saying anything. They never verified that that
2 was Donna Roberts' voice on the tape, and she's not
3 been a witness in this case, so I would object to
4 Exhibit No. 1.

5 MR. WATKINS: That operator
6 testified that this telephone number, which we have
7 had testimony amply substantiating that she called
8 and the emergency team went there, and sufficiently
9 is identified by all of the circumstances that are
10 in this record.

11 MR. CONSOLDANE: I don't object that
12 it was called from that number and that somebody
13 called from that number, and they legitimately
14 replied what was said on the tape. It was never
15 verified as to who said it. Just because they want
16 to imply it was Donna Roberts, this is a death
17 penalty case. They shouldn't be allowed to imply
18 things of that nature.

19 THE COURT: Well, I don't know that
20 it is necessary that it be established who made the
21 phone call. The fact is that the initiating
22 contact of the police that prompted them to arrive

3134

1 at the scene was a 911 tape. As to who made the
2 call which was identified
3
4 MR. LEWIS: The next Exhibit is a --
5 the next exhibit is the paperwork from the 911
6 center, which is perfectly legitimate that they
7 received a 911 call that generated the paperwork
8 and that is the residence they went to. The actual
9 phone call itself, as Mr. Consoldane indicated,
10 she didn't identify herself and they only
11 identified the residence by virtue of the computers
12 which they are supposed to do as to location. It
13 hasn't been authenticated and verified. Of course,
14 the paperwork could come in, but the 911 call came
15 in and they dispatched the vehicles and the
16 emergency and the police to the location, to
17 Fonderlac. That is perfectly legitimate, and he
18 they can testify to that. They can't testify as to
19 who they were talking to or anything of that
20 nature. The voice hasn't been identified and she
21 didn't indicate who she was.

22 MR. WATKINS: She identified herself
as Donna. She said that her husband is on the

3135

1 floor. The police went there. There's only one
2 person there, Donna Roberts, which was identified
3 by Detective Monroe. It comes in, it has always
4 been admissible evidence, a 911 call.

5 MR. CONSOLDANE: It has not. We
6 only had 911 for the last year. You make it sound
7 like it has been for 20 years.

8 THE COURT: Whether or not they have
9 always been admissible, I think it is admissible at
10 this point and again that it is necessary to
11 identify who the caller was. Even if the person
12 were unknown, it is evidence that prompted the
13 police to arrive at the scene. The Defendant's
14 objection is overruled. The Exhibit 1 will be
15 admitted. Exhibit 1-A. I have to assume from your
16 last comment that there's no objection on 1-A.

17 MR. CONSOLDANE: We're going to
18 object to the crime scene video, because they
19 already have the photographs in.

20 THE COURT: 1-A is admitted.

21 MR. CONSOLDANE: It is duplicative.
22 They don't need to have -- it is not showing

3136

1 anything different. It is all showing the same.

2 THE COURT: 1-A is the paperwork of
3 911.

4 MR. CONSOLDANE: 1-A is the 911.

5 MR. LEWIS: 1-A is okay.

6 THE COURT: I just noticed that the
7 Defendant has been taken back to jail. Are you
8 waiving the presence of the Defendant?

9 MR. CONSOLDANE: He wants to be here
10 tomorrow. I mean Monday.

11 THE COURT: Number two is the crime
12 scene video. What is the objection to that?

13 MR. CONSOLDANE: We objected to
14 number one; 1-A we have no objection to. We object
15 to number two, the crime scene video because they
16 have all of the other still photographs in there.

17 MR. LEWIS: It is duplistic and
18 cumulative. They have already got probably about
19 50 photographs of the interior of the house, the
20 area that was actually videoed, and of course, they
21 have the blow-ups, which are the ten by 12's of the
22 actual victim showing the wounds or whatever. We

3137

1 just think --

2 MR. WATKINS: There are a number of
3 Supreme Court decisions, including out of Trumbull
4 County.

5 MR. CONSOLDANE: I object to him
6 saying numerous Supreme Court decisions. If you
7 have a decision in mind, name it. Otherwise don't
8 say numerous Supreme Court decisions. You do this
9 all the time and you don't have one case, and then
10 a lot of times, you refer to old cases that you
11 tried, and the Supreme Court has said you were
12 wrong, but we'll go ahead, there's so much other
13 evidence. Because you were wrong, and they didn't
14 overrule it, doesn't mean you are allowed to do it
15 again.

16 MR. WATKINS: I'll give a couple of
17 cases.

18 THE COURT: The Court is going to
19 cut your arguments short on this point. Two and
20 three are out and the reason for that is, I think
21 that the crime scene video and the diagram were
22 usable as, to set the tone so that the Jury was

3138

1 able to understand from the beginning. They had a
2 view of the scene, that is not evidence. The video
3 also acclimated them to the scene as did the
4 diagram. You have photographs in abundance here,
5 that show everything, I believe, that was in that
6 crime scene video. I'll go with the Defense on
7 that. Two and three will not go to the Jury. Your
8 objection is noted.

9 MR. WATKINS: I wasn't given an
10 opportunity to state. State vs. Getsy. I have
11 case law I can produce fairly quickly that diagrams
12 and video, even slides and photographs are not
13 inadmissible because they are duplicative.

14 THE COURT: They are not only not
15 admissible if they are duplicative to the point
16 where they become prejudicial. The point here is
17 that they are useful tools for the Jury to be aware
18 of the location of bodies which a still photograph,
19 in and of itself, without some explanation, does
20 not necessarily provide, but based on the objection
21 and the reasoning, valid or not, I understand that
22 they are admitted at times. There was a famous

3139

1 U.S. case here about two years ago, out of
2 Cincinnati, on a crime scene.

3 MR. WATKINS: I can understand the
4 video on the cumulative which is the discretion of
5 the Court, but I don't understand the diagram which
6 gives certain measurements and how that would not
7 be considered admissible.

8 THE COURT: I think the crime scene
9 diagram is something like a piece of demonstrative
10 evidence. It is used for the edification. Okay,
11 I'll change my ruling.

12 MR. CONSOLDANE: The only objection
13 we really have to the diagram is it is not to
14 scale.

15 THE COURT: That was explained.

16 MR. LEWIS: It is not to scale.

17 THE COURT: I think that on
18 hindsight that is probably something that the Jury
19 would find useful. State's Exhibit 2 will be out.
20 Three will be in. Your objections are noted.
21 Exhibits 4 to 60, these are the pictures of the
22 autopsy. I think we have selected through those

3140

1 and removed quite a few of them. That appears on
2 record.

3 MR. LEWIS: These are the small
4 photographs. The only ones we went through were
5 the large.

6 MR. WATKINS: These are the
7 photographs of the slides. These are the ones that
8 the Court ruled on.

9 THE COURT: These are the ones we
10 have already gone through.

11 MR. CONSOLDANE: I didn't hear that.

12 MR. LEWIS: I'm sorry.

13 THE COURT: My memory is that we
14 were in agreement on those photographs that were to
15 be shown. The ones that actually were shown. Do
16 you have any other objections in reference to those
17 photographs?

18 MR. LEWIS: No.

19 THE COURT: Do you wish to go
20 through those photographs again?

21 MR. WATKINS: These are the autopsy
22 ones that Dr. Germaniuk presented.

3141

1 MR. CONSOLDANE: These are the ones
2 he took of the house. We have already gone through
3 these, and the only objections that I would have to
4 these, is the ones I have already put on the record
5 and you have already taken under consideration.

6 THE COURT: Those are the only ones?

7 MR. CONSOLDANE: We have no new
8 objections to these.

9 THE COURT: Other than what you had
10 at the time.

11 MR. CONSOLDANE: Right.

12 THE COURT: State's Exhibits 4
13 through 60 are admitted. Who has separated those?

14 MR. CONSOLDANE: Only the ones that
15 we were presented are in there now.

16 MR. WATKINS: They are marked as
17 withdrawn on our list there.

18 MR. MORROW: 22 is out, 23 is out,
19 29, 30, 32 is out. 35 is out. 36 is out. 39 is
20 out. 41 is out. 42 is out. 45 is out and 46 is
21 out. 50 is out. The remainder are in. Those
22 Exhibits are withdrawn by agreement of the parties.

3142

1 THE COURT: 61 to 68 are the camera
2 autopsy photographs. Those are the Campbell
3 autopsy photographs.

4 MR. LEWIS: Number one and six are
5 duplicate. That is close enough for me to say.

6 MR. WATKINS: You went through
7 those.

8 MR. LEWIS: Number 6 and number 11.

9 THE COURT: They do appear to be
10 very similar, but they are not actually duplicates,
11 I don't think.

12 MR. LEWIS: Show me what the
13 difference is in those two.

14 THE COURT: It is the difference of
15 the camera, distance.

16 MR. WATKINS: I don't think there's
17 much difference. I agree.

18 THE COURT: The State wish to
19 withdraw one of those?

20 MR. WATKINS: Yes. We'll withdraw
21 number 6.

22 THE COURT: Number 6 is withdrawn

3143

1 from the Jury's view. All of the remaining
2 photographs not admitted will become part of the
3 permanent record but not for the Jury's use.
4 Number 61 to 68. Those have been shown without
5 objection or at least the Court had ruled.

6 MR. WATKINS: Those are Jim
7 Campbell's photographs.

8 MR. CONSOLDANE: 61 to 68, we had an
9 objection at the time, but there's no new
10 objection.

11 MR. MORROW: We'll withdraw number
12 63. They are objecting that it is a big one and a
13 small one.

14 MR. WATKINS: A lot of the small
15 ones deal with the house and the areas that aren't
16 on the big ones.

17 MR. LEWIS: Object to the ones where
18 he's laying on the ground.

19 MR. WATKINS: I am talking about the
20 scene that is outside the body. I agreed with you
21 on the other.

22 MR. MORROW: The State is

3144

1 withdrawing the following Exhibits. '79, '80, '81,
2 '82, '85, '86, '88, 89, 99, 100, 107-A, 108-A, 109
3 and 109-A.

4 THE COURT: So 69 through 44, with
5 the exception of those just listed are admitted.
6 Is that correct? I'm sorry -- through, I'm sorry,
7 69 through 144 are admitted except the ones that
8 Chuck listed. That is 69 through 144.

9 MR. MORROW: The parties are
10 agreeing to withdraw the following. 111, 112, 133,
11 135, 136.

12 MR. CONSOLDANE: 145 through 155 are
13 okay.

14 MR. WATKINS: It is a stipulation
15 that 145 through 155 are admitted.

16 MR. MORROW: Judge, we have agreed,
17 State has agreed to withdraw 111, 113, 133, 135,
18 136, the remainder of 110 through 144. Those are
19 admitted by agreement; furthermore, 145 through 155
20 are admitted by agreement.

21 MR. WATKINS: I need to correct
22 something. 111 and 112 is out. 113 is in.

3145

1 MR. MORROW: Beginning with State's
2 Exhibit 156 to 191, the State has agreed to
3 withdraw the following Exhibits. 158, 161, 167,
4 176, 179, 179, and 190. That is 179, 188, 189 and
5 190. The rest are admitted by agreement. With
6 respect to State's Exhibits 192 through 197, the
7 Defense has objected to each of those Exhibits.

8 MR. LEWIS: We're going to object to
9 the pictures of Donna Roberts used in photographic
10 line-ups for her case. We're going to object to
11 that. It has no relevancy to this one.

12 THE COURT: What is the Defense's
13 objection?

14 MR. LEWIS: The Wagon Wheel photos,
15 simply because they already testified about the
16 receipts, the things at the Wagon Wheel. Pictures
17 of the interior, the exterior is not relevant
18 regarding this. They already got the receipts in,
19 and the room, or whatever, there's no evidence
20 collected from the room, or anything of that
21 nature. We think it is irrelevant and it is only
22 there to inflame the Jury with the idea they got a

3146

1 nice Jacuzzi room with mirrors all over and all of
2 that hot to trot stuff.

3 THE COURT: 192 through 196 --

4 MR. WATKINS: Can I respond? I
5 think when you look at the letters and the audio
6 tapes, and his description of what the room is
7 like, and the conspiracy and what they are doing up
8 until the time that they are going to kill this
9 victim, that that corroborates what he's saying the
10 room looks like. I think it is relevant. It is
11 different than the receipt. It is simply evidence
12 going along with what our case is concerning room
13 101 and what the Defendant talks about. He talks
14 about the big bed. He talks about the mirrors in
15 his letters and on the recorded conversations.
16 That corroborates what he's talking about.

17 THE COURT: Number 197 is a
18 photograph of what they found in the garbage bin,
19 which will remain in. There's already evidence
20 establishing they rented, they stayed there.

21 MR. WATKINS: It is what is inside.
22 The description of how he says --

3147

1 THE COURT: Pick one of these
2 pictures then to show the interior of the room.
3 The rest of it doesn't lend anything to the State's
4 case.

5 MR. WATKINS: We would request these
6 two pictures.

7 THE COURT: These are two different
8 views, one from one direction and one from the
9 other.

10 MR. WATKINS: I would request this
11 one.

12 THE COURT: It has already been
13 identified. I'll allow 194, 195 and 197. The
14 others will be stricken. Number 192, 193 and 196
15 are out.

16 MR. CONSOLDANE: We object to all of
17 the photos from 199 to 226 are objected to also as
18 being not relevant to their case.

19 MR. MORROW: With respect to the
20 defense objections to 199 through 226, the State
21 would move only for admissions of items 201, 202,
22 204, and 226. Also 224 is in. The State on that

3148

1 whole collection, the State is seeking 201, 202,
2 204, 224 and 226. We would agree to withdraw the
3 others in the category of 199 through 226.

4 MR. LEWIS: We would maintain our
5 objection to the remainder of these. The basis is,
6 I think, besides showing the room. I think they
7 are trying to show the location of the blood. They
8 didn't do it close enough.

9 MR. WATKINS: The trash bin is where
10 they found it and the door in the room in general
11 where the fingerprints were. We have taken out 80
12 percent of the photographs.

13 THE COURT: I can see the trash bin
14 picture.

15 MR. WATKINS: We have fingerprints
16 from that room and the back of the door is one of
17 the places where we got fingerprints. In addition,
18 there's testimony about blood evidence.

19 THE COURT: What about specifically
20 204 and 202?

21 MR. WATKINS: That shows the room.
22 There's testimony about blood on the bed and it

3149

1 shows the room in general and like I said, the door
2 and the, which you have, so I think it is relevant
3 that they see the room that was described by the
4 witnesses.

5 THE COURT: With that in mind, I'll
6 allow 201, 226 and 224. That is the picture of the
7 bin, the exterior door and the interior door where
8 the blood was found.

9 MR. CONSOLDANE: Would you read
10 those numbers one more time?

11 MR. WATKINS: Number 202 is out.
12 204 is out. 201 is in. 202 is out. 204 is out.
13 224 is admitted and 226 is admitted. Then 227
14 through 234 the Defense is objecting to those
15 photographs of Wirt Street.

16 MR. CONSOLDANE: Why do you need
17 those?

18 MR. MORROW: The glove was
19 recovered. The shoes were recovered.

20 THE COURT: Of number 230, 231, 234
21 will be admitted. There's another one, and 227 has
22 the shoes in it. That is relevant. The remaining

3150

1 pictures, 228, 229, 232 and 233 will not go to the
2 Jury.

3 MR. CONSOLDANE: We have no
4 objection to 235 to 248.

5 MR. MORROW: We have 249 and 250 is
6 two pictures of the co-defendant, Donna Roberts
7 which the Defense is objecting to.

8 THE COURT: You are not objecting
9 to any of the photographs that one from 235 to 248?

10 MR. CONSOLDANE: That is correct.
11 We're not objecting to 235 to 248.

12 THE COURT: You are objecting to 249
13 and 250?

14 MR. LEWIS: Yes. Relevancy. They
15 were just introduced to say this is Donna Roberts.
16 They were used for, I guess photo line-ups and
17 whatever in her case. They were not utilized.

18 MR. WATKINS: That was her at the
19 home that you went there that night? That was at
20 time of the homicide?

21 PAUL MONROE: Yes.

22 MR. MORROW: We also have witnesses

3151

1 describing her --

2 MR. LEWIS: That was taken on
3 December 15. It wasn't the night of the homicide.

4 THE COURT: 249 will be in. 250
5 will be out. There's testimony describing her.

6 (Court in Recess at 12:05 p.m.)

7 (After Recess in Open Court at 2:20 p.m.)

8 MR. MORROW: May it please the
9 Court, by way of agreement the parties have agreed
10 to the admission of the following Exhibits.

11 Commencing, this is a continuation, we're starting
12 with 251 through and including 276 -- I'm sorry,
13 273. There's no objection from the Defense from
14 251 through and including 273?

15 MR. CONSOLDANE: The next two we're
16 objecting to is 275-A and 275-B, and these are the
17 two letters that were sent to BCI for their
18 examination.

19 THE COURT: Those are on the desk
20 here.

21 MR. MORROW: That is correct. The
22 Defense also agreed to the admission of 276-A

3152

1 through 280.

2 ~~that was not being~~ MR. CONSOLDANE: We objected to 281.

3 MR. MORROW: By way of agreement,

4 they agree to 282-A; 282-B was withdrawn or was

5 never introduced -- excuse me, 282-C, 283, 284 were

6 admitted by agreement. 285, the Defense is

7 objecting to. 286-A, they agreed to admit. 286-B

8 ~~was not introduced.~~ 286-C was entered by

9 agreement. 286-D was also admitted. State's

10 Exhibits 287 through 291, the State is withdrawing.

11 The State is also withdrawing 292, 293. The

12 Defense is objecting to 294. The State is

13 withdrawing 295 through 308. The Defense is

14 objecting to 309.

15 MR. CONSOLDANE: No.

16 MR. MORROW: They are admitting 309.

17 Number 310 is being withdrawn. Number 309 includes

18 309-A. The State is -- or the Defense is objecting

19 to Exhibit 311, which contains five sub-parts A

20 through E. The parties have agreed to admit 312

21 and 313 as well as 314 with sub-parts 315 and 316.

22 317 and 318 are admitted. 319, the Defense is

3153

1 objecting to. 320, with all sub-parts is being
2 objected to.

3 MR. CONSOLDANE: We object to 317,
4 318 and 319, 320.

5 MR. MORROW: I'm sorry. The Defense
6 is not objecting to 317 and 318, is that correct?

7 MR. CONSOLDANE: Right.

8 MR. MORROW: Then they are also
9 objecting to 319, 320 with sub-parts. 321, there's
10 an objection, 322, 323.

11 MR. LEWIS: Right.

12 MR. MORROW: 324, 325 and 326 are
13 being admitted. 327 with sub-parts is objected to.

14 MR. LEWIS: Right.

15 MR. MORROW: 360 through 381-A,
16 which are the 19 audio tapes, along with the
17 transcriptions, the CD and the telephone log are
18 all being admitted by the Defendant or by both
19 parties. 350 -- I'm sorry, 349 was not introduced.
20 350, Consent to Search was admitted. 351 was
21 admitted. 352 is being objected to. 385 through
22 395-B are being admitted. 396, 397 and 397-A are

3154

1 being objected to. Additionally, with respect to
2 State's Exhibit 271, that was not being objected
3 to. That is 271 D-1 through 271 D-139 are not
4 being objected to. Then 273-N one through 273-N(4)
5 are also being admitted. There were not Exhibits
6 at 273-N 30 and 273-N 33. There were no Exhibits
7 under either of those two labels. I'll also
8 prepare a complete listing of all of these by way
9 of print out, so that it can be compiled with the
10 record to go to the Court of Appeals, because that
11 shows the number and the sequence. If there's no
12 objection from the Defense, I'll present it to them
13 and we can give it to the Court of Appeals.

14 THE COURT: That would be very
15 helpful. Thank you.

16 MR. MORROW: The Defense Exhibit A
17 and Defense Exhibit B, which consist of, I'm sorry,
18 nine packages, the State has no objection to the
19 admission of those. Defendant's Exhibits F through
20 O are the items that we have discussed in-chambers,
21 and are the items that the State is reserving its
22 objection on, pending discussions on relevancy.

3155

1 MR. WATKINS: We're objecting at
2 this point.

3 THE COURT: You are objecting?

4 MR. WATKINS: As to relevance, not
5 as to authenticity.

6 THE COURT: Let's start with 273.

7 MR. MORROW: It is 275-A.

8 THE COURT: What is the objection to
9 275-A and B?

10 MR. LEWIS: The objection in regard
11 to this, these purport to be two letters, each one
12 is a letter, supposedly written by Nathaniel
13 Jackson to Donna Roberts, and these were sent onto
14 BCI for the handwriting analysis. There's an
15 improper chain of custody in regard to the two
16 particular letters, and at the same time, there's
17 no authentication to the fact that in fact, the
18 letters were actually written by Nathaniel Jackson.

19 THE COURT: What do you feel is
20 improper chain of custody? What is improper about
21 the chain of custody?

22 MR. LEWIS: The chain of custody on

3156

1 here is there's no indication, I don't recall
2 anything from Paul Monroe. I think Paul Monroe
3 recovered these letters in the rear of the trunk of
4 the red Chrysler. I'm sorry. He recovered the
5 letters, this is from a dresser in the master
6 bedroom at the home at 254 Fonderlac. They were
7 recovered in there. I don't know that there was
8 anything on here indicating that Paul Monroe had
9 these in his custody the whole time and then sent
10 them onto BCI and came back. I don't think there's
11 a proper chain of custody, because Steven Greene
12 was the one who analyzed them. There's no
13 indication on the outside of the envelopes as far
14 as I know that says collected by Paul Monroe, but
15 there's no send out time and return time.

16 PAUL MONROE: If you look on the D
17 submission sheet, those will show when those were
18 taken to BCI in Richfield and on the analysis
19 sheet. It also shows Richfield ships them to
20 London, and then via certified mail, they are
21 shipped back to me.

22 MR. WATKINS: It is the

3157

1 preponderance of the evidence on chain of custody.
2 It is a kind of item that is not like drugs. It is
3 apparent on its face especially in light of Mr.
4 Greene's testimony, comparing the other writings.

5 THE COURT: My understanding was
6 that Paul delivered them and they got to Greene,
7 and then were sent back to him. That should
8 appear, I think, in the record itself.

9 MR. LEWIS: I don't recall it as
10 that being said. I know that the forms are on
11 there as submission, whatever, but they actually
12 weren't delivered, nor was Paul on the envelope
13 here. There's no indication of the date he sent it
14 out, the date he received it back or anything of
15 that nature.

16 THE COURT: Your submission form?

17 MR. WATKINS: He testified to that.
18 There's also corroboration in Mr. Greene's
19 testimony and what the item was that he identified.

20 THE COURT: That is my
21 understanding. Your objection goes to what the
22 record already is. If I am incorrect on that, the

3158

1 record will reflect that. I think that the chain
2 of custody is, was proven sufficiently to have that
3 come in. The objection is 275-A and B are
4 overruled.

5 MR. MORROW: The next should be 281.

6 MR. LEWIS: Our objection is in
7 regard to the reports, the submission report and
8 the return report and the findings, and it is in
9 reference to D-2 and D-3, which are referencing
10 these supposed handwriting letters, handwritten
11 letters. There's no other identification. The
12 problem I'm having is that these are the submission
13 sheets and the findings.

14 THE COURT: What is the State's
15 position?

16 MR. WATKINS: Your Honor, the
17 witness identified those documents, identified
18 sample handwriting. The witnesses all for the
19 State, testified sufficiently to tie in all
20 Exhibits that you have before you. And I would
21 also note, Your Honor, that the type of evidence
22 that we're dealing with, are letters that are very

3159

1 much in line with address, identification, by way
2 of address, or who they are sent to, with all of
3 the letters, have been admissible and most
4 importantly, Greene was using a variety of
5 documents that he testified that in his opinion,
6 that the letters were indeed written by Nathaniel
7 Jackson. So once the chain is proven by only a
8 preponderance, and then I think it should be those
9 reports come in, especially in light of all of the
10 testimony and the identification process.

11 THE COURT: The testimony on this
12 point that has the maximum content is Mr. Greene's
13 testimony. The State's Exhibits 281 and 285 are
14 part of the mechanism to achieve that in that all
15 that these say is that they are forwarding to you
16 these items. 275-A and B are the letters that were
17 actually forwarded from which Mr. Greene gave his
18 testimony.

19 MR. WATKINS: Along with the other
20 documents.

21 THE COURT: Yes, along with whatever
22 he took into account, but there was a test

3160

1 handwriting sample included.

2 MR. WATKINS: Yes.

3 THE COURT: I think these come in as
4 part of the testimony. It merely substantiates the
5 chain of evidence that those documents in and of
6 themselves, don't testify to anything, but it
7 merely is being proffered, I assume, to show the
8 mechanism by which they got to the officer.

9 MR. LEWIS: I understand. The only
10 thing I'm saying is the letters themselves were not
11 marked or identified as far as I know to indicate
12 that those are the letters that were actually sent.
13 Those letters could have been switched with any
14 other letter in there.

15 THE COURT: Not for the fact they
16 have been separated and kept in those envelopes,
17 which weren't opened until we started the trial.
18 Your objection is to the fact that they were not
19 clarified as most Exhibits are as they come down
20 through.

21 MR. LEWIS: What I'm trying to get
22 at is that the stamp was put on after the fact.

3161

1 The letters themselves, they put an item number on
2 it, but this is the Howland P.D. number, whatever.
3 What I am looking for is the -- well, I guess they
4 wrote on the bottom, but I don't know who wrote it.
5 I don't know who put the identification on the
6 letter. It wasn't indicated in the testimony.

7 THE COURT: The main point is he
8 identified them as the letters he testified from,
9 and I think that is sufficient.

10 MR. CONSOLDANE: I further object to
11 Mr. Greene's report on the basis that he even
12 admitted he's had no formal education outside of
13 high school as far as determining this. He merely
14 worked with another guy that knew something about
15 studying handwriting and he did not in any way, I
16 believe, fully qualify as an expert in the field.
17 He works for BCI, which is an arm of the Attorney
18 General, which is basically just to help out the
19 police and Prosecutor in the State, to prove their
20 case. I think it is strictly self-serving.

21 THE COURT: I would suggest --

22 MR. LEWIS: I have to add, of all of

3162

1 the experts we did have here, all of them had some
2 kind of an actual organization or some standards
3 that would apply to what they do and they are
4 licensed or they are qualified through schooling
5 and all of that, and I was kind of surprised, too,
6 at the same time.

7 THE COURT: He testified there's no
8 such licensing or school.

9 MR. LEWIS: That is the whole thing.
10 There's no set standards.

11 MR. WATKINS: He's testified 250
12 times.

13 THE COURT: I would suggest you are
14 two days late in your objection. He testified.
15 You had an opportunity to object. Even over
16 objection --

17 MR. LEWIS: We objected at the time.

18 THE COURT: If you did, I overruled
19 it, and there's no standard. It is experience.
20 He's testified in many other cases. His testimony
21 is accepted as an expert. There's so many areas,
22 as time goes on that there's no formal schooling

3163

1 for and that is the junk science argument, and each
2 Court has to make its own call.

3 MR. LEWIS: There's one other thing
4 in regard to the course of this trial, when an
5 expert is up there and the Prosecutor elicits on
6 direct examination, their qualifications, they turn
7 around and ask the Court to qualify them as an
8 expert. That is totally improper, because we
9 haven't had a chance to cross examine. That is not
10 the way to proceed. They just put the credentials
11 on. The Court does not qualify them as an expert
12 in that area at that point. That is not correct.
13 If you qualify him as an expert and I get up there
14 and prove that all of their credentials are phony,
15 where does that leave us? You have qualified him
16 as an expert.

17 THE COURT: I think the proper
18 manner is for a foundation to be laid by the person
19 calling the expert as a witness.

20 MR. LEWIS: Then they move on in
21 direct examination.

22 THE COURT: If you recall, I turn to

3164

1 you each time they ask to have somebody qualified
2 as an expert and I said, "Is there any objection"?

3 MR. CONSOLDANE: We objected to
4 Greene.

5 THE COURT: And then I ruled on it.

6 MR. CONSOLDANE: We never got a
7 chance to cross examine him on it. You already
8 ruled.

9 THE COURT: You had a chance to
10 cross examine. There were several experts that the
11 State did not specifically request that they
12 declare an expert and in light of no objection to
13 that, then they can testify and they did.

14 MR. LEWIS: We have never done that
15 before.

16 MR. WATKINS: I generally don't do
17 that.

18 MR. LEWIS: That is not the proper
19 procedure.

20 THE COURT: It happens all the time
21 in civil cases.

22 MR. LEWIS: We're criminal people.

3165

1 You can do it either way.

2 THE COURT: I believe the rules of
3 evidence are the same.

4 MR. LEWIS: I'm saying that it is
5 obvious.

6 THE COURT: Let me suggest to you
7 that in the future when that arises, you have the
8 right to request that of the Court, or to have the
9 Court inquire further, and I have done that.

10 MR. LEWIS: I'm going to ask for
11 separate Voir Dire examination out of the hearing
12 of the Jury. From now on, I'll have to do that.
13 Okay. Let's move on.

14 THE COURT: The upper Court can
15 review this problem and deal with it.

16 MR. LEWIS: I hope they take 2,000
17 years doing it.

18 THE COURT: Number 281, is that the
19 next one?

20 MR. LEWIS: I think 311.

21 MR. MORROW: 281 was part of Mr.
22 Greene's report. 281 and 285, that is that whole

3166

1 combination and you found those to be admissible.

2 You then go to 294.

3 MR. LEWIS: I think we agreed to it.

4 All right, if we did, we'll withdraw it.

5 THE COURT: Was there DNA on it?

6 MR. WATKINS: Yes.

7 THE COURT: That is a tie that fits
8 in with the State's case.

9 MR. MORROW: Number 311.

10 THE COURT: Unless there's some
11 point of why it should be excluded.

12 MR. LEWIS: We'll move onto number
13 311. Number 311 is the purported receipts from the
14 Days Inn. It is an unsigned -- I'm sorry, I have
15 got the one that is unsigned, we're objecting to.
16 It's a phone log. Also a receipt made out and a
17 receipt, various documents from Days Inn. The
18 point is, it was never identified in the sense
19 supposedly Donna Roberts filled that out or
20 whatever, and there's no line-up or anything else
21 that she actually was the one that did this in
22 regards to procuring the room on that night.

3167

1 Anybody can go in there with Donna Roberts' card or
2 anything else. There's nothing on there.

3 MR. CONSOLDANE: Further that was
4 one --

5 THE COURT: Your point is there was
6 no one identifying Donna Roberts as being the
7 person -- that described the woman that it could
8 not be Donna Roberts.

9 MR. LEWIS: They said a woman in her
10 late forties and was short.

11 THE COURT: Small stature and
12 reddish hair.

13 MR. WATKINS: Jeffrey Diamantes
14 identified her as having red hair, small stature,
15 and also said that he asked for identification when
16 he took the credit card. She signed Donna Roberts
17 and gave the Fonderlac address on the room and paid
18 the amount of money. Interestingly, the Defendant
19 admits on his statement that Donna took him to a
20 motel.

21 THE COURT: The Defendant's argument
22 does not go to admissibility, but to the weight and

3168

1 it is arguable that this may not have been the
2 person, but the State has gone through a logical
3 sequence of events to put that evidence before the
4 Jury. Those documents have been identified by the
5 person that worked at the motel. They were
6 generated at the motel. As to the question of
7 identification, that is something that you can
8 argue, that you're right, the State would not have
9 proven beyond a reasonable doubt that that person
10 that signed those things was in fact Donna Roberts,
11 but the Jury may infer that that is true. They
12 have the information where that inference can be
13 made. So that will be admitted.

14 MR. MORROW: Then we go to number
15 319.

16 MR. CONSOLDANE: It is another piece
17 of manufactured evidence by the Prosecutor.

18 MR. LEWIS: Judge, this comes down
19 to the phone logs, through this whole trial, they
20 take what is legitimate evidence and they compile
21 what they like and manufacture new evidence, so
22 they are framing it in their own light. If you

3169

1 have got evidence, you have got all of the tapes.
2 You can't manufacture pieces of it to give to the
3 Jury.

4 MR. WATKINS: I would like to
5 respond. The tapes are relevant and material.
6 First off, these are, this has been authenticated
7 by Mr. Dillon and others that have identified some
8 stills from it, but 319 deals with the date in
9 question, that is, December 11th, and it deals with
10 a video from a camera that takes pictures and
11 snapshots through the video of Mr. Fingerhut, who
12 at approximately 4:30, somewhat after 7:30 and at
13 9:00, is unloading buses. According to the
14 Defendant, that he saw the Defendant while he was
15 loading and unloading buses. There's three buses
16 there, and the testimony, there were only ten buses
17 all day, and I think the totality of the evidence
18 suggests that the finite period of time that we're
19 looking at deals with whether buses are there. Mr.
20 Lewis did a fine job on cross examination, cameras
21 there only for a certain period of time, and this
22 goes to weight. But most importantly it has 9:01,

3170

1 it shows the victim leaving, what clothing he has
2 on, as do the photographs. This is, in the State's
3 position, relevant and material for the reasons
4 dealing with the bus, and also dealing with showing
5 what the victim looked like, and the time that the
6 victim left. The fact that it is a composite of
7 the film doesn't take away its legitimate
8 circumstances. It was testified with the proper
9 foundation. It is the exact copy of what was
10 there, for that whole period of time.

11 MR. LEWIS: We don't have what that
12 was produced from. We don't have the original.
13 That is what the problem here is, is that Frank
14 Dillon supposedly sent her out for six or eight
15 hours Saturday and looking for photographs of a
16 camera that only picks up every 45 seconds to 60
17 seconds a shot, out of nine cameras, it doesn't
18 show the Greyhound bus terminal or area, or where
19 they operate from, and you have only got him on
20 tape for a matter of five to seven minutes,
21 supposedly, and you can't even see one minute he's
22 in the picture, the next minute he disappears 60

3171

1 feet away. Disappears. We can't see in front of
2 the bus, the buses that are out there in pitch
3 black, and you can't identify him by face on these
4 things.

5 That is ridiculous and we don't have the
6 original of this of where it was compiled from.
7 You have to have the original. Now we're getting
8 their idea of what they think is important here and
9 we don't have the original tape from the RTA.

10 THE COURT: We visited this problem
11 some days ago and I thought that there were six
12 hours of tape, which was available for view if
13 there was some suspicion that the State had either
14 doctored it or left something out or whatever.

15 MR. WATKINS: It was available.

16 MR. LEWIS: We had to go to K-Mart
17 to watch this, but the point is that is the
18 original. That is what should be introduced. If
19 they want to try to get a compilation, that is
20 fine. It is not out there someplace. You can go
21 check this out. The U. S. Marshal's office up
22 there - you can check him out and Mr. Bogus is

3172

1 running around with phony cards that are illegal.

back 2 THE COURT: I understand Defense's
3 consternation of this, but the alternative is one
4 of two choices here, not to allow this compilation
5 to be shown, or to show the entire six hours, and I
6 don't think anybody was up to accepting the latter.

7 MR. LEWIS: The problem is it has
8 already been shown to the Jury. That is the point.

9 THE COURT: I'm saying --

10 MR. LEWIS: We object.

11 MR. CONSOLDANE: Your Honor, they
12 should have provided us with the entire copy and
13 shown what they extrapolated from.

14 MR. WATKINS: They had it. It was
15 always available.

16 THE COURT: I understand that that
17 has been available. That is fundamental of what my
18 ruling has been all through this.

19 MR. CONSOLDANE: I never saw it.

20 MR. MORROW: We provided to them the
21 compilation video to them. Put them on notice that
22 that was a potential Exhibit that was going to be

3173

1 introduced. They were on notice, having received
2 that tape way back when it was delivered and
3 received by defense counsel, they had more than
4 ample opportunity to either request an opportunity
5 to view, to request an opportunity to have that
6 produced, or to play that for the Jury. They have
7 been on notice since they received those
8 compilations that were being provided to them.

9 MR. LEWIS: Go to the discovery and
10 show me where that tells you it is a compilation of
11 this. Does this tell you it is a compilation of
12 anything? It just says the Greyhound bus station,
13 and what they did is they gave us photographs of
14 him, which are the other Exhibits. That is what we
15 had, and that is what they told us. These are the
16 still photographs we have of this thing, supposedly
17 the cameras took. Then all of a sudden, later on,
18 they end up with a compilation of it and we don't
19 have the original tape.

20 MR. CONSOLDANE: We thought that was
21 the entire tape at the time.

22 MR. LEWIS: They gave us some

3174

1 photographs, which were eventually introduced.

2 THE COURT: Let me ask this

3 question. Are you of a mind that the State has

4 left out evidence that would be favorable to your

5 client or is it just that you are disagreeing with

6 the fact that somebody on the State's side made

7 this compilation, narrowing it down to the

8 testimony of the person that put this together

9 was -- they took all scenes, where the victim was

10 shown in that six hours of tape, and they put those

11 sections together. I guess it is arguable on the

12 Defendant's side that, well, our client may have

13 shown up in some of the other ones that the victim

14 wasn't in. I have no way of knowing that. I just

15 understood from the beginning that the Defense had

16 the ability to review the entire six hours.

17 MR. LEWIS: The base problem is that

18 there's a compilation and pictures, operated by

19 RTA. There's nine cameras. It does not show the

20 Greyhound. These are for RTA. The other cameras,

21 I'm sure, show the inter-office and the one you see

22 going out in the hall in the center of that room is

3175

1 from RTA. It doesn't even show you the Greyhound
2 agency or where they are at or the door or anything
3 else. That is the problem with this. It is geared
4 for RTA. There's other areas, that anybody can
5 walk through those front doors and walk. They got
6 a whole minute. How long does it take to walk
7 across a lobby to a desk or to be out in front of a
8 bush? That is the problem with this.

9 THE COURT: You are saying in affect
10 then, that because it doesn't show everything, it
11 should not be allowed to show anything?

12 MR. LEWIS: Exactly. If it covers
13 the territory. How can you say he wasn't there?
14 It's like taking a movie in here, we're going to
15 watch all day long and say somebody didn't come
16 into the Courthouse. You can't do that. It is
17 misleading.

18 MR. MORROW: That all goes to the
19 weight of the evidence which Mr. Lewis brought on
20 cross examination and in the event that the State
21 had not produced the video, it is one of those
22 damned if we do, damned if we don't. Then the

3176

1 cross examination becomes, you guys had the tape
2 down at the RTA. Why didn't you play it? Quite
3 simply, we had the evidence that we had available,
4 we presented it. Sure, we presented it in a light
5 favorable to the State, because that is what our
6 job is, to present our evidence. We compiled the
7 video, compiled it down. Detective Dillon
8 testified as to what he did. Mr. Lewis had an
9 opportunity to cross examine him as to whether or
10 not the accuracy of what he did and that all goes
11 to the weight.

12 MR. WATKINS: One other thing, the
13 testimony is very clear. Dillon was asked what was
14 his purpose. The purpose was to go through the
15 film and was Nathaniel Jackson in this anywhere in
16 this eight hours, and the answer was no.

17 MR. LEWIS: One other thing, if you
18 look at the photographs and you also look at that
19 film, you can't tell who is who. The only reason
20 he can identify Fingerhut in it, is because he was
21 wearing that white shirt. You look at the
22 photographs, you can't see their faces. You can't

3177

1 see nothing. You can't tell whether they are black
2 or white persons, and that is ridiculous evidence.
3 It should never be allowed in. This is a
4 competency issue. That is the most incompetent
5 evidence of all time. It is not a matter of
6 weight. It is incompetent.

7 MR. CONSOLDANE: Besides that, if
8 they were going to introduce it, they should have
9 told us it was a compilation to begin with and in
10 turn provided us what they took the compilation
11 from. Even looking at that, we probably wouldn't
12 have been able to do any good anyhow. It shouldn't
13 have been shown to the Jury.

14 THE COURT: If you are correct on
15 that, the damage has been done.

16 MR. LEWIS: We argued it before.

17 THE COURT: You are better off on
18 appeal if I leave it go into the Jury now, rather
19 than changing mid stream.

20 MR. LEWIS: We have lost everything
21 else.

22 MR. CONSOLDANE: It should not go to

3178

1 the Jury. We'll handle whatever we have to on
2 appeal. It should not go to the Jury.

3 THE COURT: As I say, this is a
4 rehash of what I went through before. I made my
5 decision originally to leave it in and I'm not
6 going to change that. If I am wrong, thank God for
7 the Court of Appeals. I think it has been properly
8 allowed in, that the quality of it is not the
9 issue. It is the authenticity of it, and we had
10 testimony to the effect that what it was, what it
11 professed to show, and I'll overrule the objection.
12 Number 320.

13 MR. LEWIS: It is the same thing.
14 These are the still shots that were taken from the
15 compilation which we just argued about. Everything
16 we argued about in regard to that applies as well
17 as all of the additional circling.

18 MR. CONSOLDANE: They have been
19 altered by the Prosecution.

20 MR. LEWIS: There's a blow-up.
21 There's Mr. Fingerhut. You can see his face. They
22 happen to put a circle around him because he's got

3179

1 a white shirt on. You tell me if you can identify
2 him by face on that. That is nonsense.

3 THE COURT: Dennis?

4 MR. WATKINS: Your Honor, where are
5 the small ones? They are in there. We'll withdraw
6 all of the ones with the circles. And request that
7 the Court, and these were also identified by
8 Sanches who was with him and said that is what he
9 identified him leaving -- as he was leaving in
10 that, and that is how he was dressed. The numbers
11 I am withdrawing are 320-F, 320-E, 320-H and 320-G.

12 THE COURT: Which one of these do
13 you want in?

14 MR. WATKINS: It doesn't matter.

15 THE COURT: The Defense motion will
16 be granted as to the exclusion from that series of
17 320 except for 320-I and 320-D. 320-I shows quite
18 clearly Mr. Fingerhut and 320-D shows the red
19 jacket and the time that there's testimony that he
20 left. Number 321, 322, 323.

21 MR. WATKINS: I missed two and I
22 think it is the same thing. It shows him leaving

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1 shortly before that. 320-A and B.

2 THE COURT: Again, I let you pick
3 between the three. The one I said one of these, I
4 don't see any reason for anything more than one of
5 them. They are all approximately the same time.
6 It shows he's leaving it, corresponds with the
7 testimony. You pick the ones you want.

8 MR. WATKINS: 320-A and B are out.

9 THE COURT: Your objection on the
10 phone records?

11 MR. LEWIS: The records, Judge, I
12 didn't realize that Alltel evidently got eaten up
13 or bought by Dobson Communications. The point is
14 that we have so-called phone records, which the
15 phone records, I believe they have some numbers on
16 there. They have not authenticated number one, who
17 the numbers are actually in, two, the duration of
18 the calls that were called. They put the time on
19 there, but they don't tell you whether that their
20 timing or their duration starts from the moment
21 that there's connection made to the telephone, or
22 whether when the receiver is lifted and the

3181

1 connection is made for a human voice. It doesn't
2 tell you how long the conversations are. It
3 doesn't tell you whether the numbers were forwarded
4 on to a third party, whether it shows on a bill or
5 not, such as we were talking with the people from
6 Lorain Correctional facility, that would not be
7 able to tell or the number would never show if it
8 was passed onto another number, which obviously
9 could be forwarded any time. It doesn't tell you
10 whether the calls were forwarded in any form or
11 fashion. It doesn't tell you whether they would
12 record them or not in that time frame. So, there's
13 a lot of interpretations that you can get. Out of
14 potentially those records, it doesn't tell you what
15 these things are. And just to give those point
16 blank to a Jury and start saying, well, this, this,
17 this. It doesn't tell you that. You have to have
18 somebody come in here and testify that if a number
19 is called, and this duration of time starts from
20 the moment the thing is dialing or does it start
21 from the moment that the connection is made. Does
22 it actually start from the time the receiver is

3182

1 picked up and there's communication. It doesn't
2 tell you any of that. You have got to have that in
3 order to figure out to get some interpretation of
4 what is going on between these phones, whether they
5 are forwarded onto a third party. You can't tell
6 from that. All of these calls could have been --
7 if they don't record a forwarding mechanism. If
8 they forward them, every one of these calls that
9 give us a complete incorrect record of where the
10 phone calls ended up. It is ridiculous, you can't
11 use it. You have got to have somebody come in here
12 and testify whether it does or doesn't. So you can
13 say this is the call, this was actually a calling
14 to this number. He didn't go any farther. Or they
15 have to come in and say, we can't tell you if it
16 didn't go any farther. If they got call
17 forwarding, we didn't record that. It is the first
18 number that gets billed all the time and in
19 reality, wouldn't be true. That is the problem.
20 We need somebody who knows and who is a telephone
21 company person, not layman, because I can't even
22 read my own telephone bill, and the point is that

3183

1 every telephone company is different. They have
2 charging mechanisms, the time they show for the
3 calls, all of that is different depending on the
4 telephone company.

5 MR. CONSOLDANE: Judge, if I call
6 somebody and that phone rings and nobody answers, I
7 still get billed the minute.

8 THE COURT: You need a different
9 service.

10 MR. LEWIS: You just answered the
11 question. Exactly that, we don't know.

12 THE COURT: What is your response?

13 MR. WATKINS: We spent a lot of time
14 covering this issue before the testimony came in
15 and we gave the Court case law. I believe there's
16 sufficient foundation. In addition, the record
17 reflected at the time this Court ruled this
18 admissible, that there were, the numbers included,
19 in the transcript of the Defendant's own statement,
20 and admitting making specific calls to Donna
21 Roberts' car phone to a specific number, which are
22 exactly the numbers there. And the Court excluded

3184

1 our compilation, but the Court ruled admissible,
2 based on Federal case law that Mr. Morrow cited and
3 the rules of evidence, and we feel that there's no
4 evidence to change the ruling now especially in
5 light of the fact that the Defendant's own
6 transcript and admissible statement verifies that
7 telephone calls were being made to the car phone.
8 MR. LEWIS: Doesn't say when,
9 whether they were forwarded, and also at the same
10 time it was testified to, it was just testified to
11 the fact that that is the record that Mr. Monroe
12 received. He didn't know anything about the record
13 or how to interpret the record and the prior
14 argument about the fact is that these are totally
15 admissible. Without any indication of how they are
16 compiled, what is the effect of them, how they are
17 interpreted, whatever, just a point blank deal,
18 they come in, is not correct. The law he cited
19 was, it could be authentic. It didn't say whether
20 they could be arbitrarily placed into evidence
21 without someone interpreting what they are. Can
22 the records be admitted? Sure they can, but you

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1 have to have somebody say how they operate, this
2 and that. So, if they want to introduce that
3 stuff, that is fine. I am allowed to argue that
4 the time duration, there was no connections made,
5 because there was time. I can argue anything I
6 want from those records, because they can't tell me
7 different and we don't have any evidence that is
8 any different. Every one of those phone calls were
9 all forwarded. I can say that without any problem.
10 Because there was no evidence in the case that they
11 weren't.

12 THE COURT: The Court is going to
13 stand with its prior ruling. You have built a
14 record, Mr. Lewis, Mr. Consoldane, that the Court
15 of Appeals will have adequate opportunity to review
16 your argument.

17 MR. MORROW: The next two, 322 and
18 323 are the insurance policies, the State Farm
19 policy which was independently testified to by Miss
20 Kathy Thomas. Not only do we have certification in
21 the record, but we also have Mrs. Thomas testifying
22 as being the agent that prepared that policy, and

3186

1 there's the one that actually sold it to --

2 and K. which is THE COURT: She testified as an
3 expert on insurance.

4 MR. LEWIS: The records came in.

5 MR. MORROW: He's standing by his
6 prior ruling.

7 MR. LEWIS: We're arguing the
8 insurance policies. The insurance policies with
9 Kathy Thomas, the first problem you have is with
10 Zurich. That is not an insurance policy issued by
11 State Farm. She doesn't know anything about the
12 policy. She doesn't see it signed or issued by
13 Robert Fingerhut. We don't have any information in
14 regard to that. We don't have information in
15 regard to either one of them. Whether there was
16 any assignment of the policy or any change of
17 beneficiaries by virtue of any assignment of the
18 policy, and -- I think that is it.

19 THE COURT: That is essentially the
20 same argument that was made before and for the same
21 reasons as put on the record previously, I'll admit
22 those items.

3187

1 MR. MORROW: Next, we have the
2 certification, 327-A, B and C, which are
3 certification from the ATF on the two firearms
4 traces to the two revolvers.

5 MR. LEWIS: The certification, there
6 wasn't any agents from the ATF. We would love to
7 have one of the guys in, love to have them in there
8 to find out what they are doing. There wasn't
9 anybody in here to authenticate that, and actually
10 that is a trace document. Those are just, I
11 believe, that is originally compiled. There's
12 something wrong with those documents, I can't
13 remember exactly how it works. Those are like, I
14 think like getting a copy of a registration or
15 something, but it is not really. ATF, let's put it
16 this way, there's no explanation as to how ATF has
17 the information. Those are not bill of sales, they
18 are not anything indicating that. We're just
19 objecting.

20 THE COURT: It does say on this,
21 trace history of this firearm was derived from a
22 federal licensed dealer. That has discontinued

3188

1 business and has submitted their business.

2 Everybody who buys a gun is on a computer

3 somewhere. There's a certification here and the

4 firearms trace worked through the manufacturer to

5 the dealer, to the purchaser, and I think that is a

6 valid way to have that information come in.

7 MR. LEWIS: All right. Number 352

8 is the search warrant. There isn't any reason --

9 MR. WATKINS: That is out.

10 MR. LEWIS: Thank you. He wanted

11 the whole story to be right there in the affidavit.

12 MR. MORROW: Number 396.

13 MR. LEWIS: The Wal-Mart receipt

14 Paul Monroe supposedly identified. Our argument in

15 regard to the Wal-Mart receipt was the fact that it

16 has cash. Doesn't have any indication of who

17 actually went to the store, or actually who

18 produced it or who got the receipt, and there's no

19 credit card account or anything of that nature. No

20 signatures whatsoever. Just a receipt for certain

21 time at Wal-Mart and without some other testimony

22 regarding when it was compiled and who actually was

3189

1 there --

2 THE COURT: What did this have to do
3 with this?

4 MR. WATKINS: This is a receipt that
5 Paul Monroe testified to on his direct examination
6 that was on the kitchen table, that was found dated
7 12-11 at 9:34 p.m. and it was identified as being
8 belonging to Donna Roberts. The value is that
9 Donna Roberts is at home. The receipt is on the
10 kitchen table, and it goes along with showing that
11 Donna Roberts, at the time when we say the homicide
12 occurred, was not at home, she was seen by another
13 witness driving her car, and --

14 THE COURT: Okay.

15 MR. WATKINS: Only a reasonable
16 person, a reasonable person would conclude that
17 that receipt is hers.

18 THE COURT: There was a sufficient
19 basis laid through testimony, to explain the
20 presence of this in the home. It is up to the Jury
21 to decide whether they are going to draw the same
22 inference that the State has or not. That will be

3190

1 admitted.

2 MR. MORROW: Number 397, 397-A, it
3 is the compilation of the power point.

4 MR. LEWIS: I'm going to object. We
5 have a CD disk, we have a transcripts and we have
6 the audio cassettes for all of the taped
7 conversations from the prison. They have picked
8 out what they like the most and they got a
9 transcript and what they are doing is highlighting
10 certain evidence they want in, and we have the
11 original. The Jury should not be pushed in some
12 direction of special transcripts. They have
13 already done that in the presentation of the
14 evidence. There's no reason to give that, because
15 that is duplicitous of what they already have.
16 There's no way, no how.

17 THE COURT: Would you like the Jury
18 to have the opportunity to listen to all of the
19 tapes?

20 MR. LEWIS: Of course. They have
21 that, they presented that. The problem is they
22 just picked what they liked and put it up on a 12

3191

1 by eight foot screen and let the Jury hear what
2 they want them to hear and we couldn't do anything
3 like that, because we don't have power point, and
4 all they are doing is compiling what they like out
5 of this.

6 THE COURT: We're not ever going to
7 agree on this, but it is an economy of time, unless
8 that procedure in this case, selected some of it,
9 works to your client's detriment by omitting things
10 that may be helpful.

11 MR. CONSOLDANE: We didn't object to
12 all of the tapes coming in.

13 MR. LEWIS: They should all come in
14 on equal footing.

15 THE COURT: I understand. The point
16 is that the tapes meet the criteria to come in.
17 All of the tapes that were taken, they laid a
18 foundation to bring these tapes in.

19 MR. CONSOLDANE: They are in. They
20 are in. The original. I don't see why they should
21 come in twice.

22 MR. LEWIS: That is what they are

3192

1 doing. They are picking and selecting and bringing
2 it in twice. It is already there. It is already
3 there. It is like taking a picture. We only have
4 one gross shot of the bullet going through the
5 man's head. What you are doing in the same text
6 here, saying, "Well, I'll tell you what, that was
7 all right." But the Prosecutor is going to produce
8 a larger one and one from 20 different angles and
9 we'll be able to get that in, but it is already
10 there. The problem is, this is already an absolute
11 duplicate of what is there. There's no reason in
12 the world they should be able to have or to
13 pinpoint or to have a separate thing, because they
14 can manufacture all of the evidence that way. They
15 can take all of the evidence and say, "We're going
16 to take this conversation, this conversation, and
17 we're going to produce 50 more tapes," just the
18 word we want. The Jury should get everything on an
19 equal footing.

20 THE COURT: That is what I'm saying.
21 Do you wish to have all of the tapes?

22 MR. LEWIS: Yes. If you are going

3193

1 to allow that portion of the tape in, then we want
2 a transcript of all of the rest of the tapes.

3 THE COURT: What is the basis for
4 you making that request?

5 MR. LEWIS: What I'm saying here is,
6 they have the CD with all of the telephone
7 conversations on. Not picked out, which ones to
8 like, whatever. They have the audio tapes of all
9 of the conversations. We want to hear them all.

10 And we have the transcripts. We want them to read
11 them all. Why should the Prosecution be able to
12 turn around and say, "We like these portions so
13 we're going to produce another tape and we're going
14 to produce another transcript of the stuff we like
15 and introduce that as an Exhibit." It is
16 duplicity. They have the originals. They should
17 have an equal shot listening to all of the tapes,
18 not something manufactured by the Prosecution.

19 THE COURT: Mr. Teeple, do you have
20 a recording device that plays that CD?

21 MR. WATKINS: We have cassette
22 copies. Cassettes of every conversation has been

3194

1 admitted, along with a transcript. We have
2 transcripts and cassettes that have already been
3 admitted by agreement.

4 THE COURT: I wasn't aware of that.

5 MR. LEWIS: That is what I was
6 saying.

7 THE COURT: You didn't say that.

8 MR. LEWIS: They have 19 -- they
9 want to introduce the additional, what they showed
10 is duplicities of this. It is their version.

11 THE COURT: They are duplicating
12 what the Jury will already have.

13 MR. LEWIS: They are picking out
14 what they like out of it.

15 THE COURT: You have had an
16 opportunity to select those portions and show it
17 for the Jury. There's no reason to send this back.
18 The Jury is going to have all of these.

19 MR. WATKINS: My only point and that
20 is my only observation, is that the Jury may want
21 to -- this is evidence presented in Court. They
22 may want to hear that without going through 18

3195

1 separate ten minute tapes.

2 MR. LEWIS: No.

3 MR. WATKINS: I don't think that the
4 Defense controls what is admissible evidence. The
5 question is whether or not it makes some sense.

6 THE COURT: The point is, if you
7 have two photographs showing the same thing, you
8 don't send both photographs back usually. It is
9 the same thing here. If they are going to have all
10 of these tapes of all of the conversations, their
11 objection is to you having the advantage of sending
12 this information. You have already had the
13 advantage of showing it. They have already had
14 your view of the selection.

15 MR. WATKINS: I know. In my
16 opinion, this will make it more difficult for the
17 Jury to review what they have heard in Court,
18 because they don't have that opportunity, unless
19 they go through 19 different tapes.

20 MR. LEWIS: You don't want them to
21 go through the evidence? You don't want them to
22 listen to the evidence?

3196

1 MR. WATKINS: It is up to them to go
2 through whatever form of evidence they want to go
3 through, including what was played in Court. They
4 have both.

5 THE COURT: I'm not going to send
6 this back with them. They have heard it. They can
7 find out what they want from the original tapes.

8 MR. CONSOLDANE: For the record, has
9 the State rested?

10 MR. WATKINS: No, not until we take
11 up the motions here.

12 MR. CONSOLDANE: We can't argue our
13 motions until they rest.

14 MR. WATKINS: What are you talking
15 about?

16 MR. LEWIS: This becomes a little
17 bit of a problem. If they don't rest, then
18 anything we bring up, they go, they can throw
19 another witness on.

20 MR. CONSOLDANE: When they rest,
21 we'll argue.

22 MR. WATKINS: We'll have to take it

3197

1 in two parts. My relevance argument first and then
2 we go into the other one.

3 MR. CONSOLDANE: What does relevance
4 argument have?

5 THE COURT: I think they are right
6 that before their Rule 29 motion makes any sense
7 that the State has to close. You will have to
8 decide whether you have everything in or not.
9 Their Rule 29 motion, I would expect, is going to
10 have to examine the elements of the crimes and as
11 to whether or not all of those --

12 MR. WATKINS: I understand that and
13 I am prepared for that, too.

14 THE COURT: I'll see you Monday at
15 1:00.

16 (Court in Recess at 3:30 p.m.)

17
18 (SEE SEPARATE VOLUME FILED BY KELLY WILSON FOR
19 RECORD OF PROCEEDINGS ON NOVEMBER 4, 2002 AND
20 NOVEMBER 5, 2002.)


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3198

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.


MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio